No. 20-5610

In the Supreme Court of the United States

ERIC J. BROWN,

Petitioner

vs.

STATE OF LOUISIANA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE LOUISIANA COURT OF APPEAL, FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under *Griffith v. Kentucky*, the new rule this Court announced in *Ramos v. Louisiana* applies only to defendants whose cases are "pending on direct review or not yet final." Petitioner Eric Brown's direct review ended, and his conviction and sentence were final for more than twenty years before he was made eligible for parole under this Court's opinions in *Miller v. Alabama* and *Montgomery v. Louisiana*. Brown asserts that resentencing him terminated the finality of his conviction and sentence for the purposes of *Griffith*, and so he should benefit directly from *Ramos*.

Did granting Brown parole eligibility unmoor the finality of his conviction and sentence or convert his collateral proceedings into direct review for purposes of *Griffith*?

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RELATED PROCEEDINGS[1]

Direct Review

State v. Brown, 694 So.2d 435 (La. App. 5 Cir. 1997) (affirming Petitioner's convictions and sentences)

State v. Brown, 703 So.2d 19 (La. 1997) (denying Petitioner's writ application) (Petitioner did not seek review in this Court).

State Post-Conviction Proceedings

Application for post-conviction relief filed in the Louisiana 24th Judicial District Court on 5/13/99 and denied on 9/7/99. No further review was sought.

Application for post-conviction relief filed in the Louisiana 24th Judicial District Court on 11/15/00 and denied on 11/29/00 as untimely. Petitioner applied for a writ to the Louisiana 5th Circuit Court of Appeals.

State v. Brown, 2001–KH–0984 (La. App. 5 Cir. 2001) (unpublished opinion) (declining to consider post-conviction writ application because it was not timely filed). Petitioner did not seek relief from the Louisiana Supreme Court.

Application for post-conviction relief filed in the Louisiana 24th Judicial District Court on 5/6/2009 claiming new evidence proving innocence and *Brady*[2] violation; denied on 7/1/09 as untimely. Petitioner applied for a writ to the Louisiana 5th Circuit Court of Appeals.

State v. Brown, 2009–KH–0663 (La. App. 5 Cir. 11/6/2009) (unpublished opinion) (holding that petition was timely filed within three years of discovering new evidence, denying claim as to actual innocence, and remanding to district court for hearing on Brady claim).

On 2/22/10, the district court held that (1) submitted affidavits lacked specificity and particularity and were based on hearsay, (2) there was no proof that the state had knowledge of any exculpatory information, and (3) none of the information would have changed the outcome of the trial.

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[1] Petitioner failed to list any of the related proceedings in his petition as required by Supreme Court Rule 14.1(b)(iii), including some of the proceedings leading to the judgment at issue in this case. In response to the mandate of Supreme Court Rule 15.2, Respondent is providing those proceedings that supplement the two judgments listed at p. 1 of the petition. Respondent is also providing copies of the orders entered in conjunction with the judgments sought to be reviewed, as required by Supreme Court Rule 14.1(i).

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

Brown v. Cain, 2010-0275 (La. App. 5 Cir. 5/13/10) (unpublished opinion) (affirming district court's findings and rulings).

State ex rel. Brown v. State, 63 So.3d 1027 (La. 2011) (denying writ application without opinion).

First Federal Habeas Proceeding

Brown v. Cain, No. CIV. A. 11-1890, 2011 WL 5509078, at *1 (E.D. La. Aug. 29, 2011), *report and recommendation adopted*, No. CIV. A. 11-1890, 2011 WL 5508984 (E.D. La. Nov. 9, 2011) (finding the state court rulings on innocence and *Brady* were not contrary to, or involved an unreasonable application of, clearly established Federal law and dismissing the petition with prejudice).

State Collateral Proceedings Regarding Sentence

State v. Brown, Case No. 94-5632, Louisiana 24th Judicial District Court: Petitioner filed a Motion to Correct Illegal Sentence on 9/5/12 based on this Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012). Petitioner also filed the following supplemental pleadings in the proceeding, and the court entered the following interlocutory orders: Motion to Supplement, 2/11/13; Trial Court Order, 3/15/13; Motion to Impose Sentence Under *Miller*, 5/13/13; Letter to Court, 2/20/14; Trial Court Order, 4/10/14; Letter to Court, 10/20/14; Trial Court Order, 10/23/14; Motion to Supplement, 2/10/15; Motion to Supplement, 2/18/15; Motion to Clarify, 4/2/15). On 5/1/15, the trial court denied Petitioner's claims, holding that *Miller* was not retroactive to collateral proceedings.

Brown v. State, 15-KH-395 (La. App. 5 Cir. 6/22/15) (unpublished opinion) (finding no error in trial court's ruling)

State ex rel. Brown v. State, 200 So. 3d 345 (La. 9/23/2016) (granting Petitioner's writ application and remanding for resentencing pursuant to *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) and La. Code Crim. Proc. art. 878.1).

State ex rel. Brown v. State, 210 So.3d 802 (La. 11/29/2016) (denying Brown's request to reconsider that he be sentenced pursuant to La. Code Crim. Proc. art. 878.1).

State v. Brown, Case No. 94-5632, Louisiana 24th Judicial District Court. Petitioner's subsequent filings after remand: Petitioner's Letter to the Court, 1/29/16; Motion to Impose Sentence Under *Miller*, 2/13/16; Motion to Correct Illegal Sentence, 2/16/16; Motion to Impose Sentence Under *Miller*, 3/1/16; Supplemental Motion to Correct, 3/1/16; Motion to Preclude, 5/4/17. The trial court conducted multiple conference and hearings: Trial Court Order, 2/24/16; Minute Entry, 5/5/16; Minute Entry, 6/20/16;

Minute Entry, 9/12/16; Minute Entry, 10/20/16; Minute Entry, 12/8/16; Minute Entry, 2/15/17; Minute Entry, 3/20/17; Minute Entry, 5/25/17; Minute Entry, 6/29/17.

Second Federal Habeas Proceeding

Brown v. Goodwin, Civil Action No. 16-15717 (E.D. Louisiana, filed 10/19/16): Petitioner filed his second federal habeas petition, pursuant to 28 U.S.C. § 2254, complaining that Louisiana could not implement the mandate of *Miller* by using legislation enacted after his conviction.

Brown v. Goodwin, No. CV 16-15717, 2017 WL 6276181 (E.D. La. Sept. 14, 2017), *report and recommendation adopted*, No. CV 16-15717, 2017 WL 6268701 (E.D. La. Dec. 8, 2017) (dismissing petition without prejudice for lack of jurisdiction due to prematurity).

Brown v. Goodwin, No. 18-30051, 2018 WL 3414045 (5th Cir. Feb. 22, 2018) (dismissing appeal pursuant to appellant's motion since trial court proceedings were progressing).

State Collateral Proceedings, Continued

State v. Brown, Case No. 94-5632, Louisiana 24th Judicial District Court: *Miller* hearing held on 7/2/18.

On 10/11/18, the Louisiana 24th Judicial District Court cured Petitioner's sentence by rendering him parole eligible.

1/25/19, Petitioner filed a counseled "Motion to Prohibit the Retrospective Application of La. R.S. 15.574.4 and La. C.Cr.P. art. 878.1 as a Constitutional Violation of Due Process and the Prohibition Against Cruel and Unusual Punishment."

1/31/19, Petitioner filed an out-of-time counseled Notice of Appeal claiming the post-conviction court: (1) failed to fashion an individualized sentence; (2) violated fair notice, ex post facto laws, and res judicata, thereby violating his due process rights: (3) erred by imposing a sentence not in effect when the crime was committed; and (4) rendered an excessive sentence. The appeal was granted on 2/4/19.

3/19, Petitioner filed a pro se application for post-conviction relief which was denied on 3/20/19 for lack of jurisdiction by the trial court.

Petitioner was granted parole on 07/18/2019. *See* Docket File Report—Elayn Hunt Correctional Center.

Brown v. State, Case Number 19-KH-374 (La. App. 5 Cir. 8/6/19), Petitioner filed an application for supervisory review in the Louisiana 5th Circuit Court of Appeals regarding "the denial of Petitioners non-unanimous jury verdict arguments." On 10/9/19, the Louisiana Fifth Circuit consolidated the appeal, Case No. 19-KA-370 with the writ application, Case No. 19-KH-374.

State v. Brown, 19-370, 19-374 (La. App. 5 Cir. 1/15/20), 289 So.3d 1179 (denying challenge to jury verdict and finality of conviction as exceeding scope of appeal and denying consideration of post-conviction claim of unconstitutionality of jury verdict laws because they were not timely raised below).

State v. Brown, 2020-00276 (La. 6/22/20), 297 So.3d 721 (denying writ application) ((Johnson, C.J., concurring and noting that Petitioner was entitled to appeal of his new sentence but not his conviction, which was final in 1996, but noting that Petitioner could make a collateral challenge to the non-unanimous jury verdict).

INTRODUCTION

More than twenty-six years ago, Petitioner Eric Brown killed one of his friends and stole items from his apartment. Brown was seventeen at the time. After a four-day trial, a non-unanimous jury convicted Brown of murder and robbery. He received a mandatory sentence of life in prison without parole.[3] He appealed his conviction and sentence in state court on direct review, but he was denied relief. His convictions and sentences became final on January 29, 1998, when he did not seek review from this Court.[4]

After this Court issued its opinion in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Louisiana Supreme Court granted Brown's supervisory writ application in a collateral challenge requesting retroactive application of *Miller v. Alabama*, 567 U.S. 460 (2012). The Court remanded his case back to the trial court and ordered further collateral proceedings and resentencing in light of *Montgomery*. In 2018, he was granted eligibility for parole and was paroled on July 28, 2019.

Despite receiving the full benefit of *Montgomery*, Brown filed a notice of appeal. Brown contended that granting him parole eligibility undid the finality of his conviction and sentence. Therefore, according to Brown, he should be entitled to the

[3] He received a sentence of thirty years without parole eligibility for the robbery count, but that conviction is not at issue in this petition.

[4] *See Brown v. Cain*, No. CIV. A. 11-1890, 2011 WL 5509078, at *1 (E.D. La. Aug. 29, 2011), *report and recommendation adopted,* No. CIV. A. 11-1890, 2011 WL 5508984 (E.D. La. Nov. 9, 2011).

benefit of any decision this Court might render in *Ramos v. Louisiana*, 40 S. Ct. 1390 (2020). The state courts rejected this argument.[5]

Brown now reiterates his claim before this Court: "[F]inality under *Griffith* occurs when the last imposed sentence is final, and that, consequently, Mr. Brown's convictions were not final when *Ramos* was decided." Pet. 7. According to Brown, because his sentence was modified on collateral review, his conviction and sentence were *never* final for the purposes of *Griffith* and *Teague*.

Brown's position is without support in this Court's jurisprudence. This Court explained in *Montgomery* that *Miller* hearings and parole grants do not affect finality or reopen convictions.[6] If the Court adopts Brown's argument that *Montgomery* undid the finality of his sentence and conviction, the Court would throw open the floodgates and allow all prisoners with valid *Montgomery* claims to challenge their convictions on the basis of any number of new rules this Court has adopted since the time their convictions became final. In other words, under Brown's rule, there is no reason that prisoners with sentences under *Montgomery* would be limited only to *Ramos* claims.

Brown points to no decision from any court supporting his argument that correcting a sentence in a *state collateral* proceeding, years after a *sentence has become final*, and based on a newly issued constitutional rule, unmoors the finality of

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[5] Brown's appeal of the decision rendered in the state collateral proceedings was filed January 31, 2019, over a year before *Ramos* was decided. The intermediate court decision, denying his claim, was rendered August 16, 2019, seven months before *Ramos* was decided.

[6] *Montgomery*, 136 S. Ct. at 736 ("Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, *nor does it disturb the finality of convictions*." (emphasis added)); *id.* ("Giving Miller retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions . . . .").

his conviction. Nor can he show any confusion or conflict in state and federal courts regarding that issue.

Granting certiorari is unwarranted.

STATEMENT OF THE CASE

Factual Background[7]

In late-August of 1994, Eric Brown spent the night on the sofa at his friend Carmelo Salminen's apartment. Salminen's girlfriend was also there but left the apartment in the morning. When she returned around noon, Salminen had been shot in the back of the head. His apartment had been ransacked, and his guns, safe, briefcase, and tote bag had been stolen. There were no signs of forced entry. A neighbor saw Brown back Salminen's vehicle up to the front door, load items from the apartment into it, and drive the vehicle away. Salminen's vehicle was found in a parking lot across from Brown's sister's apartment. Authorities found Brown in the apartment, hiding in a closet.

Procedural History

Twenty-six years ago, Brown was charged by grand jury indictment with first-degree murder[8] and armed robbery.[9] After a four-day trial, he was convicted of second-degree murder and armed robbery. For the murder charge, he received a mandatory sentence of life imprisonment. And he received a thirty-year sentence for

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[7] The facts are taken from the opinion in *State v. Brown*, 96-1002 (La. App. 5 Cir. 4/9/97), 694 So.2d 435, 436 *writ denied*, 97-1310 (La. 10/31/97), 703 So. 2d 19.

[8] La. R.S. 14:30. In 1995, the state amended count one of the indictment to second-degree murder. *See* La. R.S. 14:30.1.

[9] La. R.S. 14:64.

the armed robbery charge. The sentences were to run concurrently, and both were to be served at hard labor without benefit of parole, probation, or suspension of sentence.

He appealed his convictions to the Louisiana Fifth Circuit Court of Appeal. He did not complain of the non-unanimous verdict. The court upheld his conviction and sentence. *State v. Brown*, 96-1002 (La. App. 5 Cir. 4/9/97), 694 So.2d 435. He applied for supervisory writs to the Louisiana Supreme Court, which denied review. *State v. Brown*, 97-1310 (La. 10/31/97), 703 So. 2d 19. Brown did not seek review with this Court, and so direct review ended.[10] His sentences became final on January 29, 1998,more than twenty-two years ago.

Brown collaterally attacked his convictions multiple times in state and federal court. Brown got nowhere until, following this Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), he went to state court and began the collateral proceeding at issue in this writ application. He filed a Motion to Correct Illegal Sentence in the trial court on September 5, 2012, claiming that he was entitled to parole pursuant to *Miller*. On May 1, 2015, the trial court denied Brown's claims. Brown requested, and was denied, supervisory review from the intermediate court. *Brown v. State*, 15-KH-395 (La. App. 5 Cir. 6/22/15).

Brown requested review by the Louisiana Supreme Court. While his writ application was pending, this Court rendered its decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), holding that *Miller* was to be applied in state and

[10] *Brown v. Cain*, No. CIV. A. 11-1890, 2011 WL 5509078, at *1 (E.D. La. Aug. 29, 2011), *report and recommendation adopted,* No. CIV. A. 11-1890, 2011 WL 5508984 (E.D. La. Nov. 9, 2011); *State v. Brown*, 19-370 (La. App. 5 Cir. 1/15/20), 289 So.3d 1179, 1181; *State v. Brown*, 2020-00276 (La. 6/22/20), 297 So.3d 721 (Johnson, C.J., concurring).

federal collateral proceedings. Based on that decision, the Louisiana Supreme Court remanded the case to the trial court for resentencing pursuant to *Montgomery* and Louisiana Code of Criminal Procedure article 878.1—which, enacted in 2013, set forth the procedure for *Miller* hearings. *State ex rel. Brown v. State*, 200 So.3d 345 (La. 9/23/16).[11]

On October 11, 2018, in accordance with the Louisiana Supreme Court's edict, the trial court found Brown eligible for parole. And the Louisiana Parole Board granted him parole on July 28, 2019.

Despite being made eligible for parole, Brown filed a notice of appeal. On appeal, in January 2020—a few months before this Court handed down its decision in *Ramos*—Brown claimed that his conviction was unconstitutional because it was non-unanimous. The Louisiana Fifth Circuit denied relief because his claim exceeded the scope of the appeal and was not ripe because he requested an advisory opinion. Pet. App. A4.

Brown requested review from the Louisiana Supreme Court. While his application was pending, this Court handed down its decision in *Ramos* that non-

[11] Brown filed a motion for reconsideration with the Supreme Court in which he argued that the newly elected statutory provisions could not be applied to him. The Supreme Court denied his request. *State ex rel. Brown v. State*, 210 So.3d 802 (La. 11/29/16).

Unhappy with the ruling by the state supreme court, a month after the remand, Petitioner returned to federal court by filing a collateral habeas petition pursuant to 28 U.S.C. § 2254 in which he claimed, again, that it was unconstitutional to sentence him pursuant to a statute that did not exist when he committed his crime. *Brown v. Goodwin*, CIV. A. 16-15717 (E. D. Louisiana, filed 10/19/16). Ultimately, the federal district court dismissed his habeas petition without prejudice for lack of jurisdiction due to prematurity. *Brown v. Goodwin*, No. CV 16-15717, 2017 WL 6276181 (E.D. La. 9/14/17), *report and recommendation adopted*, No. CV 16-15717, 2017 WL 6268701 (E.D. La. 12/8/17). Petitioner requested a Certificate of Appeal, which was denied by the trial court, but filed an appeal with the federal Fifth Circuit Court of Appeals. He later withdrew his appeal, and the proceeding was dismissed. *Brown v. Goodwin*, No. 18-30051, 2018 WL 3414045 (5th Cir. 2018).

unanimous jury verdicts are unconstitutional in state and federal court. The Louisiana Supreme Court unanimously denied Brown's writ application, however. Chief Justice Johnson concurred in the writ denial, explaining that, although Brown was entitled to *collaterally* challenge his conviction and sentence, his conviction remained final and he was not on direct review.[12]

Brown now seeks a writ of certiorari from this Court.

REASONS FOR DENYING THE WRIT

I. THIS COURT'S REASONING IN *MONTGOMERY V. LOUISIANA* FLATLY PRECLUDES THE RESULT BROWN SEEKS.

Brown contends that a criminal conviction is "'not yet final' within the meaning of *Griffith v. Kentucky* if the sentence imposed on that conviction was vacated and resentencing is not yet final." Pet. 3. According to Brown, because he was resentenced under *Miller* and *Montgomery*, his underlying conviction is no longer final, and he should be able to benefit directly from this Court's holding in *Ramos* under *Griffith*. *See* Pet. at 7.

Brown's reliance on *Miller* and *Montgomery* is misplaced. When considering whether to render the *Miller* rule retroactive, this Court worried that claims like Brown's might arise. The threat of possibly unmooring the finality of convictions of many prisoners led the Court in *Montgomery* to explain that "[e]xtending parole

[12] Brown has not requested relief under *Teague v. Lane*, 489 U.S. 288 (1989). But if this Court is inclined to construe it as a request for state collateral relief, Louisiana believes the challenge should fail for the reasons the State offered in *Edwards v. Vannoy*, Case No. 19-5807, *Gipson v. Louisiana*, Case No. 20-251, *Dotson v. Louisiana*, Case No. 20-5728, *Young v. Louisiana*, Case No. 20-5813, *Woods v. Louisiana*, Case No. 20-5003, *Williams v. Louisiana*, Case No. 19-8740, *Jones v. Louisiana*, Case No. 19-8875, *Dunn v. Louisiana*, Case No. 19-8711, and *Tam Le v. Louisiana*, Case No. 18-8776.

eligibility to juvenile offenders does not impose an onerous burden on the States, *nor does it disturb the finality of state convictions*." *Montgomery*, 136 S. Ct. at 736 (emphasis added). The Court further observed that granting parole "does not require States to re-litigate sentences, *let alone convictions*." *Id.* (emphasis added).

It is difficult to overstate the consequences of adopting the rule Brown proposes. If all of the convictions implicated by *Montgomery* are no longer final under *Griffith*, then prisoners with valid *Montgomery* claims could bring challenges under *any* of the new rules this Court has adopted since their convictions became final. Such prisoners would not be limited to *Ramos* claims. Depending on the length of their imprisonment, they could bring claims, for example, under *Batson v. Kentucky*, 476 U.S. 79 (1986); *Cage v. Louisiana*, 498 U.S. 39 (1990); or *Ring v. Arizona*, 536 U.S. 548 (2002). That would be a strange result because the Court has considered and rejected arguments that the new rules of these cases should be retroactive. *See Schriro v. Summerlin*, 542 U.S. 348, 349 (2004) (rejecting retroactivity of *Ring v. Arizona*, 536 U.S. 584 (2002), which held that a jury must determine presence or absence of aggravating factors to impose death penalty); *Tyler v. Cain*, 533 U.S. 656 (2001) (rejecting retroactivity of *Cage v. Louisiana*, 498 U.S. 39 (1990), which held that jury instruction is unconstitutional if there is a reasonable likelihood that the jury understood it to allow conviction without proof beyond reasonable doubt); *Allen v. Hardy*, 478 U.S. 255 (1986) (rejecting retroactivity of *Batson v. Kentucky*, 476 U.S. 79 (1986), which articulated constitutional guarantees concerning racial equality in voir dire).

Montgomery's analysis is dispositive. By making *Miller* retroactive, this Court did not open a backdoor for *Montgomery* claimholders to benefit from new rules articulated after their convictions became final. And yet, that is the result Brown seeks.

This Court's clear language in *Montgomery* means that Brown's petition should fail and that certiorari is unwarranted.

II. GRANTING RELIEF TO BROWN WOULD UNSETTLE THIS COURT'S FINALITY JURISPRUDENCE.

Under this Court's decision in *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) defendants can benefit from new rules that this Court articulates if their cases are not final. *Griffith*'s reasoning rests on two key premises: similarly situated defendants should be treated the same, and States should not be required to continually marshal resources to litigate convictions in light of new standards. Adopting Brown's rule would unsettle this Court's finality jurisprudence.

Brown contends "that in light of his resentencing of October 11, 2018, his convictions are not final within the meaning of *Griffith v. Kentucky*." Pet. 3. Put another way, Brown's position is that "finality under *Griffith* occurs when the last imposed sentence is final, and that, consequently, Mr. Brown's convictions were not final when *Ramos* was decided." Pet. 7. In effect, according to Brown, his case *never* became final for purposes of *Teague* and *Griffith*.

It is unclear whether Brown believes *resentencing* itself is the mechanism that unmoors the finality of a conviction/sentence or something else. In *Montgomery*, this Court went out of its way to explain that parole eligibility could be granted without

resentencing. *Montgomery*, 136 S. Ct. at 736. ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."). And, indeed, some States—including Alabama, Arkansas, and Connecticut—passed legislation making juveniles eligible for parole without the necessity of a hearing or judicial resentencing. *See* Associate Press, *A state-by-state look at juvenile life without parole* (Jul. 31, 2017), https://tinyurl.com/y3f2rlxw.

Whether resentencing is the trigger or not, Brown's position is untenable under *Griffith*. If Brown's position is that *resentencing* terminates finality, then similarly situated juveniles in states that allow parole eligibility pursuant to statute or other procedures would not be able to raise claims related to their convictions. This thwarts a central premise of the *Griffith/Teague* rule: finality rules should prevent inequitable treatment of similarly situated defendants. *Teague*, 489 U.S. at 304 ("'The integrity of judicial review' requires the application of the new rule to 'all similar cases pending on direct review'" (quoting *Griffith*, 479 U.S. at 323–24)).

Of course, if Brown's position is that *all* prisoners who receive eligibility for probation under *Miller*/*Montgomery*—regardless of the procedural mechanism providing that relief—no longer have final convictions and sentences for the purposes of *Griffith*, that would undermine a different pillar of the *Griffith*/*Teague* rule: states should not be required "to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." *Teague*, 489 U.S. at 310 (plurality opinion); *Richardson v. Gramley*, 998 F.2d 463, 468 (7th Cir. 1993) ("[C]hanges in the law that occur after the criminal proceeding has

passed from the direct to the collateral phase are not a permissible basis for granting relief.").

As discussed above, adopting Brown's proposed rule would throw open the floodgates to numerous challenges by *Montgomery* claimholders. There is no principled mechanism to limit their claims only to the *Ramos* rule. And states across the country would be obligated to entertain all such claims.

Moreover, if the Court adopts Brown's view of finality, it will grow more difficult for this Court to declare new rules retroactive. If the Court knew that allowing juveniles to seek parole in *Montgomery* would unsettle the finality of all their claims, *Montgomery* may have turned out differently. 136 S. Ct. at 736; *cf. Ramos v. Louisiana*, 140 S. Ct. 1390, 1407 (2020). ("*Teague* frees us to say what we know to be true about the rights of the accused under our Constitution today, while leaving questions about the reliance interest States possess in their final judgments for later proceedings crafted to account for them.").

Adopting Brown's proposed rule would cause broad disruption and sharply undermine this Court's *Teague*/*Griffith* precedents.

III. BROWN IDENTIFIES NO SPLIT BETWEEN THE LOWER COURTS.

To support his position that his sentence and conviction are no longer final, and to garner this Court's interest in granting certiorari, Brown claims there is a split between lower courts about when a prisoner's conviction and sentence become final under *Griffith*. Pet. at 8. Brown also suggests that lower courts have precedent inconsistent with this Court's opinions in *Berman v. United States*, 302 U.S. 211

(1937) and *Burton v. Stewart*, 549 U.S. 147, 156 (2007). Pet. 5 n.14. None of these contentions are accurate.

This Court's decisions in *Berman* and *Burton* only reinforce the State's position that cases become final at the end of direct review. *Burton*, 549 U.S. at 156–57 ("Burton's limitations period did not begin until both his conviction and sentence became final by the *conclusion of direct review* or the expiration of the time for seeking such review." (internal quotations omitted) (emphasis added)). At the very least, neither of these cases suggests that reforming a sentence on *collateral* review disturbs finality or somehow converts the case back to direct review.

Moreover, none of the lower state or federal cases that Brown cites conflicts with the Louisiana Supreme Court's decision below. On the contrary, each of these cases presents a straightforward application of this Court's holding in *Griffith* that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." 479 U.S. at 328; *see, e.g.*, *United States v. Pizarro*, 772 F.3d 284 (1st Cir. 2014) (stating that federal prisoner could benefit from new rule handed down while he remained on *direct review* in the federal court system); *Ramirez-Burgos v. United States*, 313 F.3d 23 (1st Cir. 2002) (same). None of these cases suggests that modification of a sentence on collateral review unmoors the finality of an underlying conviction for purposes of *Griffith*.

Brown points to three cases that he contends conflict with the jurisprudence of this Court and other lower courts. *See* Pet. 5 n.14. But these decisions are irrelevant

to the current dispute because none of them presents a scenario—like Brown's—where a defendant's conviction *and* sentence were final when a court granted relief to a defendant on *collateral* review.

Two of these cases address an entirely different issue: whether a *conviction* can be final for purposes of retroactivity even if its resulting *sentence* is not final. *See Gretzler v. Stewart*, 112 F.3d 992, 1004 (9th Cir. 1997) ("Where a judgment of *conviction* has been upheld by a state's highest tribunal and the vacation of a *sentence* is on grounds wholly unrelated to the conduct of the trial, that *conviction* is final for purposes of retroactivity analysis." (emphasis added)); *United States v. Judge*, 944 F.2d 523, 526 (9th Cir. 1991) ("The difficulty with her position is that although she had not yet been *resentenced*, her *conviction* had become final." (emphasis added)). But even assuming these holdings conflict with this Court's jurisprudence, that split is irrelevant to the current dispute. Brown's case concerns a different question: whether modification of a defendant's sentence on collateral review opens the door to seek relief under any and all new rules that this Court announced between the time that his sentence and conviction became final and the time that his sentence was modified on collateral review.

The third case is also irrelevant. In *Richardson v. Gramley*, a prisoner sought to apply *Batson v. Kentucky*, 476 U.S. 79 (1986) to his conviction while in federal habeas proceedings. 998 F.2d 463 (7th Cir. 1993). His conviction had been affirmed on appeal, but, "to avoid injustice as well as to economize on judicial resources," the appellate court remanded the case so that the judge could consider additional

information developed after conviction in the trial of a co-defendant. *Id.* at 464. The Seventh Circuit held that "a judgment is not final if the appellate court has remanded the case to the lower court for further proceedings, unless the remand is for a purely 'ministerial' purpose." *Id.* at 465. Once again, this scenario is simply irrelevant to the current dispute. Brown has identified no relevant split between the lower courts.

Because there is no split between the lower courts on the issue Brown raises, certiorari is unwarranted.

CONCLUSION

The State of Louisiana respectfully submits that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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