
In the Supreme Court of the United States

GLENN YOUNG,
Petitioner

v.

DARREL VANNOY, WARDEN,
Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

- (1) Does this Court’s decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), apply retroactively to cases on federal collateral review?
- (2) Is there sufficient evidence to support Petitioner Glenn Young’s convictions?
- (3) Did Young’s trial attorney provide ineffective assistance of counsel?

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INTRODUCTION

Young is a federal habeas petitioner who was convicted by a non-unanimous jury in a Louisiana court. He asks this Court to retroactively apply its recent holding in *Ramos v. Louisiana*—which required unanimous jury verdicts in state and federal court—to his conviction. Because this Court has granted certiorari and held oral argument in *Edwards v. Louisiana* to decide whether *Ramos* applies retroactively on federal habeas review, this Court should hold Young’s petition for its decision in *Edwards*.

Young also raises two other challenges to his conviction: both fact-intensive issues of insufficiency of the evidence and ineffective assistance of counsel.¹ Neither of these challenges warrants the Court’s attention because they are specific to Young and raise no issues touching upon matters of national concern. Young merely asks this Court to correct perceived misapplications of well-settled law.

STATEMENT

Factual Background

In 2007, a decade had passed since Marcus Thomas left the Rolling 60s Crips—a street gang based in Los Angeles. Pet. App. 9, 45. But many of his family members were still in the gang, as were Petitioner Glenn Young and his cousins. Pet. App. 45. The gang wanted Thomas to take responsibility for federal drug charges levied

¹ The body of Young’s petition also discusses a due process claim stemming from his amended bill of information. That claim fails for three reasons: (1) it is not “fairly included” in any of his questions presented, *see* Sup. Ct. R. 14.1(a) (“Only the questions set out in the petition, or fairly included therein, will be considered by the Court.”); (2) the petition does not adequately explain how or why the amendment process violated his due process rights; and (3) the petition makes no mention of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) or how Young’s due process claim surmounts AEDPA’s “high bar for habeas relief,” *see* *Virginia v. LeBlanc*, 137 S. Ct. 1726, 1729 (2017).

against one of Young's cousins. Pet. App. 45. Thomas refused. Eventually, the cousin was sentenced to twenty-four years in prison. The gang was "not happy about it," and Thomas feared retaliation. Pet. App. 9, 45.

One day, a gang member confronted Thomas in a grocery store but left before the argument turned physical. Pet. App. 45. Later, Young and his cousins fired shots at Thomas as he drove by with his girlfriend and her daughter. Pet. App. 45. The bullets struck the SUV's windows and tires but not its occupants. Pet. App. 9. When questioned by police investigators, Thomas identified Young as one of the shooters and told them that Young lived on Hattie Street. Pet. App. 45–46.

Young was at the Hattie Street house with Calvin Elie and three others when officers arrived to execute the search warrant. Pet. App. 46. The officers took everyone outside before searching the house. Pet. App. 46. Their search found a plastic baggie with a little more than thirty-one grams of cocaine, but no fingerprints, under the couch cushions. Pet. App. 46. In the kitchen, they found a bag of marijuana on a counter next to a scale with Wallace's fingerprint. In a kitchen cabinet, they also found a box of sandwich baggies, an open box of baking soda, a package of batteries, and a Glock matching the spent casings recovered from the scene of the shooting. Pet. App. 46.

Procedural Background

The State filed a bill of information charging everyone in the house with possessing cocaine. Pet. App. 47. Elie pleaded guilty and received probation in exchange for agreeing to testify against the others. Pet. App. 47. The State later

charged Young with illegally using a weapon. Pet. App. 47. Although the record reveals little on the charging procedure, the State appears to have amended the bill of information against Young and filed another bill of information against him under a separate docket number. Pet. App. 16.

Young pleaded not guilty to both charges and went to trial. Pet. App. 47–48. Elie testified that he heard Young say he needed a “Reggie,” slang for thirty-one grams of cocaine. Pet. App. 46 n.5, 47. Thomas also testified, identifying Young as one of the shooters. Pet. App. 45. Because it was not part of a charged offense, the court excluded all evidence of marijuana, and the jury was not aware of the marijuana discovery except for a few inadvertent witness references. Pet. App. 46 n.7. The jury, by a 10-2 vote, convicted Young of both charges. Pet. App. 6. The trial court classified him a habitual offender and imposed concurrent fifty-year terms of imprisonment at hard labor without parole. Pet. App. 44.

Young appealed, challenging the sufficiency of the evidence and the excessive nature of his sentence. The Louisiana Court of Appeal for the Second Circuit amended his sentences. It shortened his parole restriction to the first five years of his drug sentence. And it vacated his sentence for the weapons conviction and remanded for resentencing. Pet. App. 44, 59. The Louisiana Supreme Court denied his application for a writ of certiorari. *See* Pet. App. 41.

Young filed an application for post-conviction relief in the First Judicial District Court of Caddo Parish. Pet. App. 40. He alleged ineffective assistance of counsel and a defective charging document. Pet. App. 40. The district court denied

his application. Pet. App. 40. The state appellate court affirmed. Pet. App. 39. The Louisiana Supreme Court denied his application for discretionary review. Pet. App. 36. The court concluded that the ineffective assistance claim fell short of the *Strickland v. Washington* standard and that the defective charging document claim “fail[ed] to demonstrate prejudice resulting from any defect in the bill of information.” Pet. App. 36.

Young availed himself of federal post-conviction review under 28 U.S.C. § 2254. He again contended that the evidence was insufficient to support his convictions and that his lawyer rendered ineffective assistance of counsel. The District Court for the Western District of Louisiana adopted the Magistrate Judge’s recommendation to deny his petition. Pet. App. 5. Young appealed. In a per curiam decision, the Fifth Circuit denied him a certificate of appealability because reasonable jurists would not find the denial of habeas relief “debatable or wrong” or “that the issue deserves encouragement to proceed further.” Pet. App. 3.

While Young’s collateral appeal was pending before the Fifth Circuit, this Court decided *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). *Ramos* held that a conviction—in state or federal court—based upon a non-unanimous verdict violates the Sixth Amendment’s jury guarantee and incorporated that requirement through the Fourteenth Amendment to the States. That decision applied to all cases pending on direct review. Shortly after handing down *Ramos*, the Court also granted certiorari and held argument in *Edwards v. Vannoy* to decide whether *Ramos* applies retroactively to cases on federal collateral review. 140 S. Ct. 2737, 2738 (2020).

Young now asks the Court to review the denial of his insufficient evidence and ineffective assistance of counsel claims. He also asks the Court to consider whether he is entitled to a unanimous jury verdict under *Ramos*. Recognizing that the Court's decision in *Edwards* will determine whether his unanimous jury claim is entitled to relief, he requests that the Court stay his petition pending resolution of *Edwards*. Pet. 5.

REASONS FOR DENYING THE PETITION

I. THE PETITION DUPLICATES THE QUESTION IN *EDWARDS V. VANNOY*.

Young's conviction became final when the State appellate and supreme courts rejected his direct appeal. On federal collateral review, Young now requests retroactive application of the *Ramos* rule to his case in light of his non-unanimous jury verdict. There is no need to grant certiorari in this case to decide whether *Ramos* is retroactive. As Young notes, this Court has already granted certiorari in *Edwards v. Louisiana* to answer that very question.

As a general matter, under this Court's jurisprudence, new rules apply only to convictions that are not final. *See Griffith v. Kentucky*, 479 U.S. 314 (1987). New rules do not apply to cases that are final because of the retroactivity bar this Court erected in *Teague v. Lane*, 489 U.S. 288 (1989), and subsequent decisions. There are two exceptions to that general bar against retroactive application of new rules. Because the *Ramos* rule is new and procedural, it will apply retroactively only if it satisfies *Teague's* second exception. *See Ramos*, 140 S. Ct. at 1419 (Kavanaugh, J., concurring). It cannot satisfy *Teague's* second exception because—like *every* procedural rule this Court has considered since adopting the *Teague* framework—it does not implicate

“the fundamental fairness and accuracy of the criminal proceeding.” *Schrivo v. Summerlin*, 542 U.S. 348, 352 (2004) (quoting *Saffle v. Parks*, 494 U.S. 484, 495 (1990)); *accord Teague*, 489 U.S. at 311. Thus, neither Young nor the petitioner in *Edwards* should receive relief under *Ramos*.

In any event, because the Court is likely to resolve this issue in *Edwards*, the Court should hold Young’s petition for that decision and then dispose of it accordingly.

II. YOUNG’S LAST TWO QUESTIONS PRESENTED INVITE THIS COURT TO FUNCTION AS A COURT OF ERROR CORRECTION.

Young’s reasons for granting his petition are not “compelling.” *See* Sup. Ct. R. 10. He repeats the claims he presented to the lower courts without identifying any factor that justifies this Court’s review. Although he conclusively argues that the Louisiana courts and the Fifth Circuit “decided an important, federal question in a way that conflicts with relevant decisions of this Court,” Pet. 5, the petition identifies no split of authority or unresolved issue of federal law, *see* Sup. Ct. R. 10(c). Instead, his evidentiary insufficiency claims amount to assertions that the lower courts misapplied what he acknowledges is “settled” law. Pet. 5. Moreover, his ineffective assistance of counsel claims invite fact-finding and are particular to this case. Neither claim merits further consideration.

A. Young’s Insufficiency of the Evidence Claim Is Based on a Perceived Misapplication of Settled Law and an Improper Credibility Determination.

Young asks this Court to weigh in on two evidentiary points: (1) whether sufficient evidence proved that he constructively possessed the cocaine and (2) whether witness testimony identifying him as a shooter was credible. Evidentiary

disputes—at least in the context of settled law—do not warrant this Court’s discretionary review. Even if they did, the law was correctly applied and the credibility determinations were not inappropriate.

Supreme Court Rule 10 explains that the Court “rarely” grants a petition “when the asserted error consists of . . . the misapplication of a properly stated rule of law.” But that is what Young seeks here. He agrees that *Jackson v. Virginia*, 443 U.S. 307 (1979), establishes the scope of inquiry for a federal habeas court. Pet. 19–20. He agrees that, to find him guilty of the drug charge, the State had to prove that he exercised “sufficient control and dominion to establish constructive possession.” Pet. 20 (quoting *State v. Major*, 888 So. 2d 798, 802 (La. 2004)). And he agrees with the factors for determining whether he exercised sufficient control and dominion of the cocaine. Pet. at 20 (listing factors).

What Young contests—like all evidentiary insufficiency claims—is that the evidence did not show that he possessed the requisite level of control and dominion over the baggie of cocaine. Pet. 20–21. In other words, according to Young, the trial court got constructive possession law and the relevant facts right but misapplied that law to those facts. There is nothing “rare” about this alleged misapplication of state law that warrants certiorari review.

Young also challenges the sufficiency of the evidence that he illegally used a firearm. He argues that the jurors would have discounted Thomas’ identification of him as shooter if they had known that Thomas changed his testimony over time and that Thomas testified at trial in exchange for probation. Pet. 21–22. Even if Young

were right, federal collateral review cannot provide the relief he seeks: “[F]ederal habeas courts [possess] no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.” *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983). It would be an odd result if federal collateral review were to “authorize broader federal review of state court credibility determinations than are authorized in appeals within the federal system itself.” *Id.* at 435.

Finally, even if the evidence against Young were in some way incomplete, it is not so insufficient as to warrant relief on federal habeas review. In federal habeas proceedings, “[a] reviewing court may set aside the jury’s verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury”—*i.e.*, only if the state court decision “was ‘objectively unreasonable.’” *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam) (quoting *Renico v. Lett*, 559 U.S. 766, 773 (2010)). The evidence in this case falls far short of that standard. The Fifth Circuit found that it failed even the easier standard to grant a certificate of appealability. There is no compelling reason for this Court to review these claims.

B. Young’s Ineffective Counsel Claims Belie the Record, Make Unsupported Legal Conclusions, and Are Particular to Young.

Young’s petition resurrects the ineffective assistance of counsel claims that the Fifth Circuit found unworthy of a certificate of appealability. He argues that his attorney should have (1) challenged the search warrant, (2) excluded evidence, (3) requested a continuance, (4) objected to marijuana references, (5) noted juror race and gender, (6) requested transcripts, (7) objected to agent testimony, and (8)

requested an accomplice instruction. These claims are fact-bound inquiries unworthy of certiorari review. To reach the merits of these arguments, the Court would have to find the facts to be as Young says they are.

For example, Young posits that, because the warrant authorized officers to search for only a .40 caliber handgun and its ammunition, they exceeded the warrant's scope when they reentered the residence and found the cocaine after seizing the handgun and ammunition. Pet. 6–10. To decide whether his attorney's failure to exclude the cocaine on this basis violated his right to counsel, first the Court would have to determine which items the warrant "particularly" authorized. *See Marron v. United States*, 275 U.S. 192, 196 (1927) ("The requirement that warrants shall particularly describe the things to be seized . . . prevents the seizure of one thing under a warrant describing another."). The warrant, however, is not in the record.

Similar factual ambiguity plagues Young's argument that his attorney should have challenged the search warrant. He states that "we must review the detailed interview between Marcus Thomas . . . and Detective Lane Smith" to determine if the affidavit supporting the search warrant established probable cause. Pet. 12. But neither the interview nor the affidavit is in the record. Young's six remaining claims of ineffective counsel address his attorney's trial conduct,² but the record contains scant details about what happened during the trial.

² These claims raise factual disputes over issues like whether (1) the attorney felt "surprised by the weapons charge," Pet. 15; (2) the jury heard any of the marijuana references, Pet. 15–16; (3) the attorney had a good reputation, Pet. 16; (4) the attorney followed state court rules for requesting transcripts, Pet. 16–17; (5) an officer presented false testimony about the reason for the search, Pet. 18; and (6) Elie's testimony linked Young to the cocaine, Pet. 18–19.

Even assuming that Young’s version of the facts is true, these claims present no pressing issues of law. His claims are not the type of “important federal questions” or issues of national importance deserving certiorari review. *See* Sup. Ct. R. 10. Their resolution will not clarify the law of ineffective assistance of counsel for state and federal courts, trial attorneys, or other habeas petitioners.

These claims, moreover, rest on unsupported legal conclusions. Young contends that his attorney’s deficient performance prejudiced him under *Strickland v. Washington*, 466 U.S. 688 (1984). Pet. 6. “Under *Strickland*, a defendant who claims ineffective assistance of counsel must prove (1) ‘that counsel’s representation fell below an objective standard of reasonableness,’ and (2) that any such deficiency was ‘prejudicial to the defense[.]’” *Garza v. Idaho*, 139 S. Ct. 738, 744 (2019) (internal citation omitted) (quoting *Strickland*, 466 U.S. at 688, 692).

Young’s petition includes no detailed discussion of either *Strickland* prong—despite its declarations that the attorney’s performance “caused Young prejudice” and that “[c]onsidered objectively . . . the verdict would have been different.” Pet. 16, 18 (internal quotation marks omitted). Thus, the petition fails to adequately explain how the errors Young assigns to his attorney’s pretrial and trial performance entitle him to relief under *Strickland*. The state trial court and federal district court were right to reject Young’s “naked allegation of ineffective assistance of counsel.” *See United States v. MacCollom*, 426 U.S. 317, 327 (1976).

Young’s reasons for reviewing the last two questions presented are not compelling. This Court should not accept his invitation to function as a court of errors.

CONCLUSION

The State respectfully asks the Court to deny Young's petition or, in the alternative, hold his petition pending resolution of *Edwards*.

Respectfully submitted,

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