

No. 20-7017

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

DENNIS MARTIN BEYER, JR.,
Petitioner,

Supreme Court, U.S.
FILED
DEC 18 2020
OFFICE OF THE CLERK

v.

THE STATE OF TEXAS,
Respondent.

*On Petition for a Writ of Certiorari
To the Court of Criminal Appeals of Texas*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court recently recognized that the term "trial by an impartial jury," contained within the Sixth Amendment of the United States Constitution, requires jury unanimity. The Court further recognized that this requirement applies to state and federal criminal trials.

Petitioner was convicted of continuous sexual abuse by a jury that was not required to agree unanimously on which two or more specific acts of sexual abuse were committed by Petitioner or the exact date when those acts were committed. To date, the Court of Criminal Appeals of Texas has not written on the constitutionality of the statute.

This Court has not directly spoken on the constitutionality of continuous sexual abuse statutes that do not require a jury to unanimously agree on the particular acts of wrongdoing committed by a defendant.

This case, therefore, presents the following question:

Does the constitutional requirement of jury unanimity require a jury to be unanimous as to specific acts of sexual abuse in order to convict a defendant of continuous sexual abuse?

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from a petition for discretionary review proceeding in which Petitioner, Dennis Martin Beyer, Jr., was the Appellant before the Court of Criminal Appeals of Texas. Mr. Beyer is a prisoner who was convicted of Continuous Sexual Abuse of Young Child in the 6th Judicial District Court of Lamar County, Texas, and is in custody of the State of Texas. The State of Texas was the Appellee before the Court of Criminal Appeals of Texas.

RULE 29.6 STATEMENT

Dennis Martin Beyer, Jr., Petitioner, is not a corporate entity.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Dennis Martin Beyer, Jr., respectfully petitions the Court for a writ of certiorari to review the judgment of the Court of Criminal Appeals of Texas.

OPINIONS AND ORDERS BELOW

On September 30, 2020, the Court of Criminal Appeals of Texas issued a judgment refusing Mr. Beyer's petition for discretionary review. The September 30, 2020, refusal is unpublished and attached as Appendix A.

On July 9, 2020, the Court of Appeals for the Sixth Appellate District of Texas issued a judgment affirming the trial court's judgments. The July 9, 2020, judgment is unpublished and attached as Appendix B.

On November 22, 2019, a jury convicted Mr. Beyer and sentenced him to 99 years imprisonment within the 6th Judicial District Court of Lamar County, Texas. The November 22, 2019, judgment of conviction is unpublished and attached as Appendix C.

JURISDICTION

The Court of Criminal Appeals of Texas had jurisdiction over the petition for discretionary review under Texas Rules of Appellate Procedure, Rule 68. The judgment of the Court of Criminal Appeals of Texas was entered on September 30, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

The Fourteenth Amendment to the United States Constitution provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner was convicted of continuous sexual abuse by a non-unanimous jury. It was alleged that Petitioner committed two or more acts of sexual abuse during a period that was 30 or more days in duration. Each alleged act of sexual abuse is a violation of the Texas Penal Code and a jury is required to agree unanimously in a trial of any of those acts individually. Under Texas' continuous sexual abuse statute, a jury is authorized to dispense with unanimity concerning the two or more acts of sexual abuse.

When this Court recently issued its opinion in *Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020) (recognizing that the term "trial by an impartial jury" requires jury unanimity), Petitioner's case was still pending on direct appeal.

On August 21, 2020, Petitioner submitted the present issue

to the Court of Criminal Appeals of Texas in his Appellant's Petition for Discretionary Review. The Court of Criminal Appeals has held that a defendant may complain for the first time in a petition for discretionary review that a statute has been held to be void, and that such a complaint should be addressed in the interests of judicial economy. *See Smith v. State*, 463 S.W.3d 890, 895 (Tex.Crim.App. 2015). Although the statute in question has not been held to be void, *Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020), has been held to be retroactive to cases that are pending on direct review at the time of the Court's ruling, which applies to this case. Under these circumstances, the Court of Criminal Appeals considered BPetitioner's petition and ultimately refused relief. *See Vines v. State*, No. 09-14-00487-CR (Tex.App.-Beaumont April 11, 2018) (not designated for publication) (defendant may complain for the first time in a petition for discretionary review).

REASONS FOR GRANTING THE PETITION

By denying Petitioner's petition for discretionary review, the Court of Criminal Appeals of Texas has decided an important question of federal law that has not been, but should be, settled by this Court. The question presented is important, recurs frequently, and is perfectly presented on this record. This Court should grant certiorari to stop Texas' and other states' curtailment of defendant's constitutional right to a unanimous jury verdict.

I. The Question is Important and Recurs Frequently.

The importance of this issue—whether the requirement of jury unanimity applies to the particular acts of sexual abuse in a

jury trial for continuous sexual abuse—is self-evident. *See Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020) (recognizing that the term "trial by an impartial jury" requires jury unanimity and applies to the states).

This Court touched on the issue of jury unanimity in continuous sexual abuse cases in *Richardson v. United States*, 526 U.S. 813, 816 (1999). In considering jury unanimity requirements of a different statute, the Court, by analogy, discussed the jury unanimity issues that have arisen in the context of continuous sexual abuse statutes adopted by various state legislatures. The Court noted that continuous sexual abuse statutes typically allow "jury disagreement about a 'specific' underlying criminal 'incident' insisting only upon proof of a continuous course of conduct" in violation of the law." 526 U.S. at 821. The Court observed that in doing so, the States were likely responding to the special difficulties inherent in proving the individual criminal acts in such cases, and that the special subject matter of such cases indicates that they represent an exception to the general rule requiring a jury to unanimously agree on the particular acts of wrongdoing committed by a defendant. *Id.* at 821-23. In light of *Ramos v. Louisiana*, the Court's direct attention to the issue is warranted.

Following a plea of not guilty, Petitioner was convicted of one count of continuous sexual abuse and one count of sexual assault. Petitioner was sentenced to 99 years' and 20 years' imprisonment, without the possibility of parole, respectively. By a single issue, Petitioner maintains that Section 21.02 of the Texas

Penal Code, entitled "Continuous Sexual Abuse of Young Child or Children" violates the newly recognized constitutional requirement of a unanimous jury verdict.

A person commits the offense of Continuous Sexual Abuse of Young Child if during a period of 30 or more days in duration, a person who is age 17 or older commits two or more acts of sexual abuse against one or more victims who are under the age of 14. TEX. PEN. CODE § 21.02(b). Subsection (d) unconstitutionally states, "If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed." TEX. PEN. CODE § 21.02(d).

"Acts of sexual abuse" that qualify for prosecution include:

(1) aggravated kidnapping under Section 20.04(a)(4) if the actor committed the offense with the intent to violate or abuse the victim sexually; (2) indecency with a child under Section 21.22(a)(1)...; (3) sexual assault under Section 22.011; (4) aggravated sexual assault under Section 22.021; (5) burglary under Section 30.02... if the actor entered a habitation with intent to commit ...[sexual assault]; and (6) sexual performance by a child under Section 43.25.

TEX. PEN. CODE § 21.02(c).

While jury unanimity is not required about the two or more specific acts committed for this particular offense, a lesser included offense conviction for a crime requiring a singular act can only be had if the jury agrees unanimously to a specific act.

See Soliz v. State, 353 S.W.3d 850, 854 (Tex.Crim.App. 2011).

In Petitioner's case, he was convicted by a jury that was non-unanimous as to which two or more acts of sexual abuse were allegedly committed. In the charge of the court on guilt-innocence,

the jury was authorized to return a guilty verdict without being unanimous as to the individual acts of sexual abuse that make up the series of acts for an essential element of the offense. Thus, the jury could have found that up to 24 acts occurred (12 jurors times 2 different acts per juror). and still obtain a conviction.

The reasoning of the Supreme Court of Hawai'i in *State v. Rabago*, 81 P.3d 1151 (Haw. 2003), which struck down the state's similar statute, is persuasive and should be followed by this Court because the Hawai'i court recognized under the state's case law that the underlying acts are separate and distinct offenses. *Id.* at 1168.

In sum, allowing a jury to convict a defendant without being unanimous as to the specific acts of sexual abuse in a prosecution for continuous sexual abuse fails to ensure that the constitutional requirement for jury unanimity is fulfilled for all criminal defendants. Petitioner's conviction for continuous sexual abuse by a nonunanimous jury violates his right to a jury trial, as guaranteed by Amendments VI and XIV to the United States Constitution.

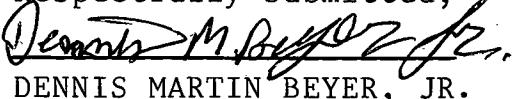
As a result, Petitioner respectfully suggests that some guidance from the Supreme Court of the United States is warranted.

CONCLUSION AND PRAYER FOR RELIEF

Dennis Martin Beyer, Jr., respectfully prays that this Court grant this petition for a writ of certiorari to resolve the question Presented.

Dated: December 16, 2020

Respectfully submitted,


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