

No. _____

IN THE
Supreme Court of the United States

JOSEPH BRYANT

PETITIONER,

v.

STATE OF LOUISIANA,

RESPONDENT.

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

—
PETITION FOR WRIT OF CERTIORARI
—

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QUESTION PRESENTED

This Court held in *Ramos v. Louisiana*, that Louisiana's non-unanimous jury scheme was unconstitutional. Pretermitted the question raised in *Edwards v. Vannoy*, concerning whether *Ramos* applies to final cases on federal habeas review, under *Griffith v. Kentucky*, new rules apply to all defendants whose cases are "pending on direct review or not yet final." As Petitioner is still on direct appeal from the judgment entering his conviction and sentence, this case presents the following question:

Is Petitioner convicted by a non-unanimous verdict, whose case is not yet final, entitled to the benefit of the holding in *Ramos*?

PARTIES TO THE PROCEEDING

The petitioner is Joseph M. Bryant, the defendant and defendant-appellant in the courts below. The respondent is the State of Louisiana, the plaintiff and plaintiff-appellee in the courts below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Joseph Bryant, respectfully petitions for a writ of certiorari to the Louisiana Second Circuit Court of Appeal in *State v. Bryant*, 277 So. 3d 874 (La. Ct. App. 2019) remanded for further proceedings, decision reached on appeal by *State v. Bryant*, 2020 La. App. LEXIS 361 (La. App. 2 Cir., Mar. 4, 2020) writ denied by *State v. Bryant*, 2020 La. LEXIS 2714 (La., Nov. 10, 2020).

OPINIONS BELOW

The judgment of the Louisiana Second Circuit Court of Appeal affirming the conviction but remanding the matter for resentencing is reported at *State v. Bryant*, 277 So. 3d 874 (La. Ct. App. 2019). *Appendix “A”, Pet. App. 1a-8a.* The subsequent denial of appeal from the resentencing is reported at *State v. Bryant*, 2020 La. App. LEXIS 361 (La.App. 2 Cir., Mar. 4, 2020). *Appendix “B”, Pet. App. 9a-15a.* The Louisiana Supreme Court’s order denying review on November 10, 2020, is reported at *State v. Bryant*, 2020 La. LEXIS 2714 (La., Nov. 10, 2020). *Appendix “C”, Pet. App. 16a.*

JURISDICTIONAL STATEMENT

The opinion of the Louisiana Second Circuit Court of Appeal was entered on June 26, 2019, affirming the conviction and remanding for resentencing. *Appendix “A”, Pet. App. 1a.* The Court of Appeals denial from the subsequent remand was

issued March 4, 2020. See *Appendix "B"*, Pet. App. 9a. The Louisiana Supreme Court denied review of that decision on November 10, 2020. *State v. Bryant*, 2020 La. LEXIS 2714 (La., Nov. 10, 2020). *Appendix "C"*, Pet. App. 16a. This Court's jurisdiction is pursuant to 28 U.S.C. § 1257(a).

The petition for certiorari is timely, as it arises from the judgment of conviction and sentence which was not imposed until November 10, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." U.S. Const. Amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.

U.S. Const. Amend. XIV.

Article 782(A) of the Louisiana Code of Criminal Procedure provided at the time of Petitioner's trial: "Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict." La. C.Cr.P. art. 782(A).

STATEMENT OF THE CASE

Petitioner was charged by bill of information with attempted aggravated rape (violations of La. R.S. 14:27 and 14:42) and armed robbery (a violation of La. R.S. 14:64). *State v. Bryant*, 277 So. 3d 874, 875 (La. Ct. App. 2019). He was found guilty as charged by a non-unanimous jury verdict. A copy of the minutes are attached as Appendix D. He was ultimately sentenced to 65 years at hard labor.

Only two issues were raised during petitioner's appeal: his competency to stand trial, and his adjudication as a third-felony offender. The Court of Appeal ultimately ruled that after 'four separate hearings with five different doctors', "two findings that Mr. Bryant was not competent to stand trial, evidence that he was diagnosed with schizoaffective disorder, bipolar type disorder, and post-traumatic stress disorder', the trial court's decision finding the defendant competent to stand trial was not an abuse of discretion. However, the Court of Appeals found the district court erred in finding the defendant a third-felony offender and sentencing him to life without parole. The Court remanded for resentencing.

At the resentencing, Mr. Bryant adjudicated a second-felony offender and was sentenced to 65 years at hard labor. Evidence considered at this sentencing hearing included that he had a "history of psychiatric treatment dating back to when he first saw a psychiatrist at the age of 9 or 10 after he set his stepfather's bed afire. He also reported delusions of control and paranoia, as well as hallucinations." *State v. Bryant*, 53321 (La. App. 2 Cir 03/04/20), 293 So. 3d 701, 705.

The Court of Appeals upheld the trial court's sentence on remand finding the 65 year sentence was "not disproportionate and do[es] not shock the sense of justice." *State v. Bryant*, 53321 (La. App. 2 Cir 03/04/20), 293 So. 3d 701, 708. The Louisiana Supreme Court denied writs. *State v. Bryant*, 2020 La. LEXIS 2714 (La., Nov. 10, 2020).

Petitioner's case was pending appeal when this Court granted certiorari in *Ramos v. Louisiana*, and remained pending on direct appeal after the decision in *Ramos* was issued on April 20, 2020.

REASONS FOR GRANTING THE WRIT

Mr. Bryant was convicted by a non-unanimous jury. His case was pending on appeal when *Ramos v. Louisiana* was decided. On April 20, 2020, this Court held that non-unanimous convictions violated the 6th and 14th Amendments. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).

On April 27, 2020, this Court summarily granted, vacated and remanded for further consideration twelve cases (eleven from Louisiana) based upon the decision in *Ramos*.¹ (Order List, 4/27/2020).

¹ See *Nagi, Kassim M. v. Louisiana*, 18-1585 (Order of 4/27/2020) (Justice Thomas would deny); *Lewis, Billy R v. Louisiana*, 18-7488 (Order of 4/27/2020); *Alridge, Dajuan v. Louisiana*, 18-8748 (Order of 4/27/2020); *Dyson, Corlious v. Louisiana*, 18-8897 (Order of 4/27/2020) (Justice Thomas would deny); *Brooks, Michael v. Louisiana*, 18-9463 (Order of 4/27/2020) (Justice Thomas would deny); *Dick, Shaun v. Oregon*, 18-9130 (Order of 4/27/2020); *Sheppard, Kevin v. Louisiana*, 18-9693 (Order of 4/27/2020); *Crehan, Jace v. Louisiana*, 18-9787 (Order of 4/27/2020); *Heard, Robert v. Louisiana*, 18-9821 (Order of 4/27/2020); *Richards, Aaron v. Louisiana*, 19-5301 (Order of 4/27/2020) (Justice Thomas would deny); *Victor, Errol v. Louisiana*, 19-5989 (Justice Thomas would deny); *Johnson v. Horatio v. Louisiana*, 19-6679 (Order of 4/27/2020).

On June 3, 2020, the Louisiana Supreme Court remanded nearly forty non-final cases to the courts of appeal to conduct new error patent reviews in light of the decision in *Ramos v. Louisiana*. See *State v. Jinks*, 2019-00818 (La. 06/03/20), 296 So. 3d 1018 (remanding to Court of Appeal for a new error patent review “if the non-unanimous jury claim was not preserved for review in the trial court or abandoned during any stage of the proceedings, the court of appeal should **nonetheless** consider the issue as part of its error patent review.”) (emphasis added). The Louisiana Supreme Court has continued to remand cases for error patent review regardless of whether the issue was raised in the trial court or on appeal. See *State v. Ardison*, 2019-01210 (La. 11/24/20) (same); *State v. Strong*, 2020-00483 (La. 12/08/20); 202 La. LEXIS 2911 (same).

This Court has also continued to vacate convictions in cases with non-unanimous jury verdicts on direct appeal and remand those cases for further consideration in light of *Ramos v. Louisiana*. *Hayes v. Louisiana*, 20-5123 (Jan. 11, 2021); *Jones v. Louisiana*, 20-5363, (Jan. 11, 2021). Because this case was pending when this Court held in *Ramos v. Louisiana* that non-unanimous verdicts violated the 6th and 14th Amendments to the United States Constitution, Petitioner is entitled to the same relief.

I. This Court Should Grant, Vacate And Remand The Case So That The Louisiana Courts Can Conduct Error Patent Review.

At the time the Louisiana Court of Appeal reviewed the conviction, this Court had not addressed the constitutionality of Louisiana’s scheme permitting non-

unanimous verdicts. However the case was not final when this Court issued its decision in *Ramos v. Louisiana*.

The Louisiana courts recognized that the validity of a verdict – based upon the number of jurors who voted for it – was reviewable as error patent. See *State v. Arceneaux*, 19-60 (La. App. 3 Cir 10/09/19) (“The defendant is correct in that if the Supreme Court finds a non-unanimous jury verdict to be unconstitutional for the types of verdicts returned in the present case and if the Supreme Court applies such a holding retroactively to include the jury verdicts returned in the present case, the verdicts returned in the present case would be improper and would be considered an error patent.”); *State v. Ardison*, 52739 (La. App. 2 Cir 06/26/19), 277 So. 3d 883, 897 (“Under Louisiana law, the requirement of a unanimous jury conviction specifically applies only to crimes committed after January 1, 2019. The instant crimes were committed in 2017, and thus, the amended unanimous jury requirement is inapplicable to Ardison's case. Ardison's assertion of an "error patent" is without merit.”); *State v. Aucoin*, 500 So. 2d 921, 925 (La. Ct. App. 1987) (“In our earlier opinion, *State v. Aucoin*, 488 So.2d 1336 (La. App. 3rd Cir. 1986), pursuant to court policy, the record was inspected and we found a patent error from the polling of the jury; the verdict represented a finding of guilty with only nine jurors concurring when ten is required. We reversed and remanded the case. The State filed an application for a rehearing alleging that the polling of the jury actually was a ten to two verdict but there was an error in transcribing the polling of the jury verdict and requested an opportunity to correct the transcript.”).

The Louisiana Supreme Court has specifically held that review of non-unanimous convictions should be done for all non-final cases:

The matter is remanded to the court of appeal for further proceedings and to conduct a new error patent review in light of *Ramos v. Louisiana*, 590 U.S. ___, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020). If the non-unanimous jury claim was not preserved for review in the trial court or was abandoned during any stage of the proceedings, the court of appeal should nonetheless consider the issue as part of its error patent review. See La.C.Cr.P. art. 920(2).

The present matter was pending on direct review when *Ramos v. Louisiana* was decided, and therefore the holding of Ramos applies. See *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 716, 93 L.Ed.2d 649 (1987). Nothing herein should be construed as a determination as to whether that ruling will apply retroactively on state collateral review to those convictions and sentences that were final when Ramos was decided.

State v. Jinks, 2019-00818 (La. 06/03/20), 296 So. 3d 1018, 1019. The decision has consistently been applied to cases, like Petitioner's, whose convictions were pending on direct review.

II. This Court Should Grant, Vacate And Remand The Case So That The Louisiana Courts Can Consider Whether Petitioner had a non-unanimous verdict.

Mr. Bryant's counsel did not raise the issue of non-unanimity in the initial appeal of his conviction or sentence. However, the Louisiana Supreme Court has consistently remanded cases for error patent review to the Courts of Appeal, to assess whether the conviction was non-unanimous. And the Courts of Appeal have either granted a new trial, or remanded to the district court for a hearing on whether the conviction was unanimous.

The only potential question, subject to debate, concerns whether the conviction in this case was unanimous. As a result, to the extent the matter is disputed, the appropriate response is to remand to the district court to address the issue:

In *State v. Fortune*, 2019-0868 (La. App. 4 Cir. 8/12/20), So.3d , 2020 La. App. LEXIS 1252, 2020 WL 4679040, this Court addressed a similar issue. In *Fortune*, the defendant filed an appeal arguing that his conviction by a non-unanimous jury was unconstitutional. This Court noted that the appellate record was unclear as to whether the jury's verdict was non-unanimous. In particular, this Court noted that "the only evidence presented of the 10-2 verdict were the representations by the defense counsel and the prosecutor at sentencing." *Fortune*, 2019-0868, p. 2, So.3d , 2020 La. App. LEXIS 1252, 2020 WL 4679040, *1. As such, this Court remanded the matter to the district court with instructions to review the record to determine whether the verdict was non-unanimous. This Court further ordered the district court file a per curiam "addressing the Ramos issue and stating the outcome of its review." Id.

In this matter, we find the Fortune's Court course of action appropriate. Unlike in *Fortune*, there is no evidence in the record before this Court that reveals whether the jury verdict was non-unanimous. Thus, we remand this matter to the district court.

State v. Williams, 2018-0445 (La. App. 4 Cir 10/29/20).

CONCLUSION

The petition for writ of certiorari should be granted, vacated and then remanded in light of the decision in *Ramos v. Louisiana*.

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