

APPENDIX “B”

DISTRICT COURT RULING(S)

SPRY W.F. SERVICE

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 12-890

STATE OF LOUISIANA

DIVISION "E"

VERSUS

DARRELL TILLERY

RECEIVED

OCT 12 2020

FILED: _____

WEPSO
DEPUTY CLERK

ORDER

This matter comes before the court on petitioner's UNIFORM APPLICATION FOR POST-CONVICTION RELIEF, MEMORANDUM IN SUPPORT, PETITIONER FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM, MOTION FOR EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL, MOTION TO COMPEL ANSWER, ALL STAMPED AS FILED AUGUST 28, 2020.

On November 20, 2013, petitioner was convicted of count #1, #3, and #4, LSA-R.S. 14:42, relative to aggravated rape victim under 13, and count #2, LSA-R.S. 14:43.1, sexual battery victim under 13. The court sentenced him on counts #1, #3, and #4 to life imprisonment at hard labor, consecutively, and on count #2 to 10 years, to run concurrently with count #1. He also pled guilty to the multiple bill. The court sentenced him in accordance with his plea agreement as a second felony offender to 10 years imprisonment at hard labor, to run concurrently with his sentence in case # 14-746. His conviction was affirmed on appeal. *State v. Tillery*, 14-KA-429 (La. Sapp. 5 Cir. 12/16/14), 167 So.3d 15; *writ denied*, 2015-KO-0106 (La. 11/6/15), 180 So.3d 306.

On November 29, 2016, the court denied petitioner's previously filed an application for post-conviction relief. Petitioner sought appellate writ, which the Fifth Circuit Court of Appeal denied. *Tillery v. Vannoy*, 17-KH-18 (La. App. 5 Cir. 1/13/17). The Louisiana Supreme Court also denied writ, and in doing so, issued the following per curiam:

PER CURIAM:

*1 Denied. Relator fails to show that he received ineffective assistance of counsel under the standard of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As to his remaining claims, they are repetitive and/or unsupported. *See La.C.Cr.P. arts. 930.4 and 930.2.*

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

State ex rel. Tillery v. State, 2017-0226 (La. 9/28/18), 253 So. 3d 139

The petitioner now files an application for post-conviction relief (APCR). He claims that his non-unanimous conviction is in violation of his right for equal protection under the 14th Amendment, in light of the most recent decision by the United States Supreme Court, *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390 (2020).

Under the clear language of LSA-C.Cr.P. art. 930.8, the petitioner had two years from the date that the conviction and sentence became final to file an application for post-conviction relief, unless he proves an exception to the time limitations of LSA-C.Cr.P. art. 930.8 (A). Petitioner's case has long been final.

Petitioner does not provide an exception to timeliness. The *Ramos* decision only affects cases not yet final, and thus is not retroactive. The United States Supreme Court specifically

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JON A. GEGENHEIMER

noted, "the Court's decision today will invalidate some non-unanimous convictions where the issue is preserved *and the case is still on direct review.*" *Id.* At 1419, emphasis added. The petitioner clearly does not fall within this category.

This APCR is untimely, and thus, is procedurally barred from review. Under LSA-C.Cr.P. art. 928, an application may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle petitioner to relief. In this case, the petitioner has not alleged a valid claim reviewable in accordance with LSA-C.Cr.P. art. 930.3 or 930.4.

Accordingly,

IT IS ORDERED BY THE COURT that petitioner's *Application for Post Conviction Relief* and accompanying pleadings are hereby **DENIED**.

Gretna, Louisiana this 05 day of October 2020.

Frank A. Brindisi
JUDGE

PLEASE SERVE:

Petitioner: Darrell Tillery, DOC # 293814, Louisiana State Penitentiary, Angola, LA 70712

Thomas Butler, District Attorney's Office, Appellate Division, 200 Derbigny St., Gretna, LA 70053



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SIGNED: HON. FRANK A. BRINDISI - DIVISION: E - 10/05/2020 10:56:23 - CASE:12-00890 - ID:22216/145100

APPENDIX “D”

**5TH COURT OF APPEAL:
RULING**

DARRELL TILLERY NO. 20-KH-385
VERSUS FIFTH CIRCUIT
DARREL VANNOY, WARDEN COURT OF APPEAL
STATE OF LOUISIANA

December 04, 2020

Susan Buchholz
First Deputy Clerk

CONFIDENTIAL
LSA-RS 46:1844(W)
ATTORNEYS OF RECORD
ONLY

IN RE DARRELL TILLERY

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE FRANK A.
BRINDISI, DIVISION "E", NUMBER 12-890

Panel composed of Judges Robert A. Chaisson,
Stephen J. Windhorst, and Hans J. Liljeberg

WRIT DENIED

Relator, Darrell Tillery, seeks review of the district court's denial of his application for post-conviction relief on October 5, 2020.

On November 20, 2013, following a jury trial, relator was found guilty of three counts of aggravated rape of a juvenile (counts one, three, and four) and one count of sexual battery of a juvenile (count two). With regard to count one, defendant was found guilty by a verdict of ten to two, and on count four, he was found guilty by a verdict of eleven to one. The other two verdicts were unanimous. *See State v. Tillery*, 14-429 (La. App. 5 Cir. 12/16/14), 167 So.3d 15, 25, n.9, *writ denied*, 15-106 (La. 11/6/15), 180 So.3d 306.

On August 28, 2020, relator filed a second application for post-conviction relief in the district court, challenging the constitutionality of his non-unanimous jury verdicts in light of *Ramos v. Louisiana*, 590 U.S. --, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020). On October 5, 2020, the district court denied relator’s application as untimely under La. C.Cr.P. art. 930.8, noting that relator failed to prove an exception to the time bar as *Ramos* only affects cases not yet final. Relator now seek review of this denial, asserting that he has met the exception of the time bar in La. C.Cr.P. art. 930.8(A)(2) in light of the *Ramos* decision, which he asserts must be applied retroactively.

Ramos v. Louisiana, *supra*, holds that the Sixth Amendment right to a jury trial-as incorporated against the states by the Fourteenth Amendment-requires a unanimous verdict to convict a defendant of a serious offense. However, at this time, the holding in *Ramos* is limited only to those defendants whose matters were

still pending on direct review at the time the Supreme Court's decision in *Ramos* was rendered, and not to those defendants, like relator, whose matters are currently on collateral review.¹ As such, we find no error in the district court's determination that relator's application for post-conviction relief was untimely and that relator failed to prove an exception to the time bar based on the decision rendered in *Ramos, supra*.

Accordingly, this writ application is denied.

Gretna, Louisiana, this 4th day of December, 2020.

RAC
SJW
HJL

¹ We note that the issue of the retroactive application of *Ramos v. Louisiana, supra*, to cases on collateral review is currently pending in the United States Supreme Court. See *Edwards v. Vannoy*, -- U.S. --, 140 S.Ct. 2737, 206 L.Ed.2d 917 (2020).

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAIISON, JR.

JUDGES



FIFTH CIRCUIT

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CURTIS B. PURSELL
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

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I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN
TRANSMITTED IN ACCORDANCE WITH UNIFORM RULES - COURT OF APPEAL, RULE 4-6 THIS
DAY 12/04/2020 TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF
THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY
COUNSEL AS LISTED BELOW: ^

Arthur B. Russell

20-KH-385

CURTIS B. PURSELL
CLERK OF COURT

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Frank A. Brindisi (DISTRICT JUDGE)
Grant L. Willis (Respondent)

Thomas J. Butler (Respondent)

MAILED

Honorable Jeffrey M. Landry (Respondent)
Attorney General
Louisiana Department of Justice
1885 North 3rd Street
6th Floor, Livingston Building
Baton Rouge, LA 70802

APPENDIX “F”

**LOUISIANA SUPREME COURT:
RULING**

Tillery v. Vannoy

Supreme Court of Louisiana. March 23, 2021 --- So.3d --- 2021 WL 1112987 (Mem) 2021-00185 (La. 3/23/21) (Approx. 1 /

2021 WL 1112987

Supreme Court of Louisiana.

Darrell TILLERY

v.

Darrel VANNOW, Warden

No. 2021-KH-00185

03/23/2021

Applying For Supervisory Writ, 24th Judicial District Court Number(s) 12-890, Court of Appeal, Fifth Circuit, Number(s) 20-KH-385.

Opinion

*1 Writ application denied.

Weimer, C.J., would grant and assigns reasons.

Griffin, J., would grant for the reasons assigned by Chief Justice Weimer.

*1 WEIMER, C.J., would grant to address the retroactivity of **Ramos v. Louisiana**, — U.S. —, 140 S.Ct. 1390, 206 L.Ed. 2d 583 (2020).

All Citations

--- So.3d ---, 2021 WL 1112987 (Mem), 2021-00185 (La. 3/23/21)

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