

APPENDIX A

Affirmed and Memorandum Opinion filed February 11, 2020.



**In The
Fourteenth Court of Appeals**

NO. 14-18-00547-CR

RICKY HAYWOOD-WATSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 1494189**

MEMORANDUM OPINION

Appellant appeals his conviction for continuous sexual abuse of a child. Appellant's appointed counsel filed a brief in which he concludes the appeal is wholly frivolous and without merit. The brief meets the requirement of *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), presenting a professional evaluation of the record and demonstrating why there are no arguable grounds to be advanced. See *High v. State*, 573 S.W.2d 807, 811–13 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and file a pro se response. *See Stafford v. State*, 813 S.W.2d 503, 512 (Tex. Crim. App. 1991). At appellant's request, the record was provided to him. On October 14, 2019, appellant filed a pro se response to counsel's brief. Appellant also filed a reply to the State's brief on December 16, 2019.

We have carefully reviewed the record, counsel's brief, appellant's response and reply, and the State's brief, and agree the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record. A discussion of the brief or pro se response would add nothing to the jurisprudence of the state. We are not to address the merits of each claim raised in an *Anders* brief or a pro se response when we have determined there are no arguable grounds for review. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005).

Accordingly, the judgment of the trial court is affirmed.

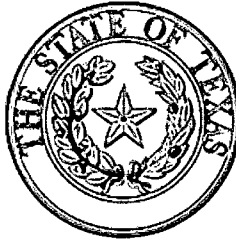
PER CURIAM

Panel consists of Chief Justice Frost and Justices Jewell and Spain.
Do Not Publish — Tex. R. App. P. 47.2(b).

APPENDIX B

Justices

TRACY CHRISTOPHER
KEN WISE
KEVIN JEWELL
FRANCES BOURLIOT
JERRY ZIMMERER
CHARLES A. SPAIN
MEAGAN HASSAN
MARGARET "MEG" POISSANT



Chief Justice

KEM THOMPSON FROST

Clerk

CHRISTOPHER A. PRINE
PHONE 713-274-2800

Fourteenth Court of Appeals

301 Fannin, Suite 245
Houston, Texas 77002

Tuesday, March 17, 2020

Ricky Haywood-Watson
#02206869
Telford Unit
3899 Hwy 98
New Boston, TX 75570

Eric Kugler
Assistant District Attorney
1201 Franklin
Suite 600
Houston, TX 77002-1923
* DELIVERED VIA E-MAIL *

Dan McCrory
Harris County District Attorney Office
500 Jefferson
Suite 600
Houston, TX 77002
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 14-18-00547-CR
Trial Court Case Number: 1494189

Style: Ricky Haywood-Watson
v.
The State of Texas

Please be advised that on this date the Court **DENIED APPELLANT'S** motion
for rehearing in the above cause.

Panel Consists of Chief Justice Frost and Justices Jewell and Spain

Sincerely,

/s/ Christopher A. Prine, Clerk

cc:

APPENDIX C

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/17/2020

HAYWOOD-WATSON, RICKY Tr. Ct. No. 1494189

COA No. 14-18-00547-CR

PD-0370-20

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

RICKY HAYWOOD-WATSON
TELFORD UNIT - TDC # 2206869
3899 STATE HWY 98
NEW BOSTON, TX 75570

APPENDIX D

PD-0370

20

Ricky Haywood-Watson
TDCJ No. 2206869, Barry B. Telford Unit
3899 State Highway 98, New Boston, Texas 75570-5669
Main Phone:(903)628-3171

July 6, 2020

RECEIVED IN
COURT OF CRIMINAL APPEALS

JUL 13 2020

Deana Williamson, Clerk

Deana Williamson, Clerk
Court of Criminal Appeals
P.O. Box 12308, Capitol Station
Austin, Texas 78711

Re: *Ricky Haywood-Watson v. The State of Texas*
Case No. PD-0370-20

Dear Honorable Clerk:

Enclosed for filing with the Court of Criminal Appeals are Appellant's Motion for Leave to File Appellant's Amended Motion for Rehearing and Appellant's Amended Motion for Rehearing. Please file said documents and bring them to the attention of the Court.

Thank you for your kind assistance in this matter.

Respectfully yours,

Ricky Haywood-Watson
RICKY HAYWOOD-WATSON
APPELLANT

BEST COPY AVAILABLE

Cc w/encl: RH-W

Kim K. Ogg, District Attorney
State Prosecuting Attorney

NO. PD-0370-20

COURT OF APPEALS NO. 14-18-00547-CR

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

RICKY HAYWOOD-WATSON,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY

APPELLANT'S MOTION FOR LEAVE TO FILE
APPELLANT'S AMENDED MOTION FOR REHEARING

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Ricky Haywood-Watson, Appellant, presents this motion for leave to file Appellant's Amended Motion for Rehearing pursuant to Texas Rules of Appellate Procedure 79.3. In support of this motion, Haywood-Watson states the following:

I.

Haywood-Watson timely filed a motion for rehearing of the order that refused his Petition for Discretionary Review. The

Court has not entered a decision on the motion.

II.

Haywood-Watson seeks to advance a new ground for review that was not and could not have been raised in the original petition. *See Gambill v. State*, 692 S.W.2d 106, 107 (Tex.Crim.App. 1985) (may be possible to use such amendment to advance new ground for review when rehearing sought from denial of petition for review).

The question Haywood-Watson seeks to present for review is as follows: In light of *Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020), is a jury required to agree unanimously on which two or specific acts of sexual abuse were committed by the defendant in a prosecution for Continuous Sexual Abuse of Young Child?

New constitutional rules governing the conduct of prosecutions must be "applied retroactively to all cases, state or federal, pending on direct review or not yet final" when the rule was announced, regardless of whether they constitute a clear break from past precedent. *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987); *Steadman v. State*, 360 S.W.3d 499, 504 n. 13 (Tex.Crim.App. 2012).

In *Ramos v. Louisiana*, the Supreme Court of the United States announced a new constitutional rule that the term "trial by an impartial jury" contained within the Sixth Amendment carries with it the requirement of jury unanimity.

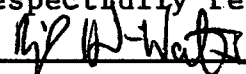
Texas Penal Code § 21.02(d) violates the United States constitutional requirement of a unanimous jury verdict, which is a recurring issue that this Court has failed to decide since the statute's inception.

PRAYER

Ricky Haywood-Watson prays that the Court grant this motion for leave to file Appellant's Amended Motion for Rehearing.

Dated: July 6, 2020

Respectfully requested,



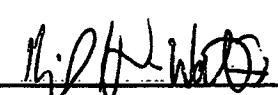
RICKY HAYWOOD-WATSON
APPELLANT
TDCJ No. 2206869
Barry B. Telford Unit
3899 State Highway 98
New Boston, Texas 75570
Main Phone: (903) 628-3171

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served by placing same in the United States Mail, first-class postage prepaid, on the 6th day of July, 2020, addressed to:

Kim K. Ogg, District Attorney
500 Jefferson Street, Suite 600
Houston, Texas 77002

State Prosecuting Attorney
P.O. Box 13046
Austin, Texas 78711-3046



RICKY HAYWOOD-WATSON
APPELLANT

APPENDIX E

PD-0370

20

Ricky Haywood-Watson
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July 6, 2020

RECEIVED IN
COURT OF CRIMINAL APPEALS

JUL 13 2020

Deana Williamson, Clerk

Deana Williamson, Clerk
Court of Criminal Appeals
P.O. Box 12308, Capitol Station
Austin, Texas 78711

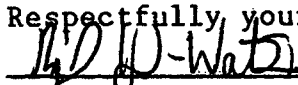
Re: *Ricky Haywood-Watson v. The State of Texas*
Case No. PD-0370-20

Dear Honorable Clerk:

Enclosed for filing with the Court of Criminal Appeals are Appellant's Motion for Leave to File Appellant's Amended Motion for Rehearing and Appellant's Amended Motion for Rehearing. Please file said documents and bring them to the attention of the Court.

Thank you for your kind assistance in this matter.

Respectfully yours,


RICKY HAYWOOD-WATSON
APPELLANT

BEST COPY AVAILABLE

Cc w/encl: RH-W

Kim K. Ogg, District Attorney
State Prosecuting Attorney

NO. PD-0370-20

COURT OF APPEALS NO. 14-18-00547-CR

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

RICKY HAYWOOD-WATSON,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY

APPELLANT'S AMENDED MOTION FOR REHEARING

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Ricky Haywood-Watson, Appellant, submits this amended motion for rehearing pursuant to Texas Rules of Appellate Procedure 79.3 and requests that the Court resubmit this cause for further consideration of its refusal of his Petition for Discretionary Review.

QUESTION PRESENTED FOR REVIEW

In light of *Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020), is a jury required to agree unanimously on which

two or more specific acts of sexual abuse were committed by the defendant in a prosecution for Continuous Sexual Abuse of Young Child?

REASON FOR REVIEW

The question presented is a recurring issue that this Court has failed to decide since the inception of Penal Code § 21.02 in 2007. Based on the new constitutional rule established in *Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020), the jury needs to unanimously agree on which two acts of sexual abuse occurred because they are not manner and means of committing the offense of Continuous Sexual Abuse of Young Child.

Haywood-Watson was convicted of Continuous Sexual Abuse of Young Child by a jury that was instructed that it was 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. This violated Haywood-Watson's right to a jury trial, as guaranteed by Amendments VI and XIV to the United States Constitution. *See Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020).

A person commits the offense of Continuous Sexual Abuse of Young Child if during a period of 30 days or more 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) 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).

In *Ramos v. Louisiana*, 590 U.S. ___, 2020 WL 1906545 (April 20, 2020), the Supreme Court of the United States explained that the Sixth Amendment promises that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy 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." *Id.*, slip op. at 3. "But it says nothing about what a 'trial by an impartial jury' entails. Still, the text and structure of the Constitution clearly suggest that the term 'trial by an impartial jury' carried with it some meaning about the content and requirements of a jury trial. One of those requirements was unanimity." *Id.* The Supreme Court has repeatedly and over many years recognized that the Sixth Amendment requires unanimity. And this requirement applies to state and federal criminal trials equally.

In Haywood-Watson's case, he was convicted by a jury that was non-unanimous as to which two or more acts of sexual abuse was allegedly committed. In the charge of the court on guilt-innocence, the jury was authorized to render and return a 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 can find that up to 24 acts occurred (12 jurors times 2 different acts per juror) and still obtain a conviction under Texas Penal Code § 21.02. Based on the new constitutional rule, § 21.02(d) is unconstitutional.

Under Texas law, each alleged act of sexual abuse standing

alone constitutes an alleged offense under Penal Code § 21.021, Aggravated Sexual Assault, or § 21.11, Indecency With a Child, among other statutes. For the most part "Texas law requires that a jury reach a unanimous verdict about the specific crime that the defendant committed. This means that the jury must 'agree upon a single and discrete incident that would constitute the commission of the offense alleged.'" *Cosio v. State*, 353 S.W.3d 766, 771-72 (Tex.Crim.App. 2011). In short, the "commits two or more acts of sexual abuse" element of Continuous Sexual Abuse of Young Child is not the manner and means of committing the offense, but are separate and distinct offenses that require jury unanimity.

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 *Dixon v. State*, 201 S.W.3d 731 (Tex.Crim.App. 2006), three dissenting judges on this Court predicted that the Legislature would pass a statute that would allow jurors to convict on as many as 12 different acts. *Id.*, at 738-39 (Price, J., dissenting, joined by Meyers and Johnson, JJ.). Actually, the Legislature passed a statute which doubles that number, for 24 different acts may be found to have occurred to secure a conviction under the continuous abuse statute. This Court should grant review to decide this important, recurring question of whether the continuous abuse statute violates the constitutional requirement for jury unanimity.

PRAYER

Ricky Haywood-Watson, Appellant, prays that this Court grant this motion for rehearing, set aside the refusal, resubmit this cause for another hearing before the Court, reverse the judgment and sentence in Cause No. 1494189, and render a judgment of acquittal. Alternatively, Haywood-Watson requests that the case be remanded to the trial court for a new trial.

Dated: July 6, 2020

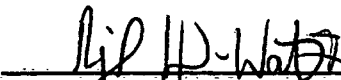
Respectfully submitted,


RICKY HAYWOOD-WATSON
APPELLANT
TDCJ No. 2206869
Barry B. Telford Unit
3899 State Highway 98
New Boston, Texas 75570
Main Phone: (903)628-3171

CERTIFICATE OF COMPLIANCE

This is to certify that the above motion for rehearing complies with Texas Rules of Appellate Procedure 79.2(c) in the following respects: (1) the ground on which the above motion is based is limited to intervening circumstances of substantial or controlling affect; and (2) this motion is presented in good faith and not to delay.

Dated: July 6, 2020

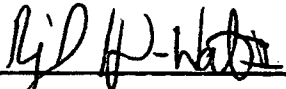

RICKY HAYWOOD-WATSON
APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served by placing same in the United States Mail, first-class postage prepaid, on the 6th day of July, 2020, addressed to:

Kim K. Ogg, District Attorney
500 Jefferson Street, Suite 600
Houston, Texas 77002

State Prosecuting Attorney
P.O. Box 13046
Austin, Texas 78711-3046



RICKY HAYWOOD-WATSON
APPELLANT

APPENDIX F

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

7/14/2020

HAYWOOD-WATSON, RICKY Tr. Ct. No. 1494189

**COA No. 14-18-00547-CR
PD-0370-20**

On this day, the Appellant's pro se motion for leave to file an amended petition for discretionary review has been granted.

Deana Williamson, Clerk

RICKY HAYWOOD-WATSON
TELFORD UNIT - TDC # 2206869
3899 STATE HWY 98
NEW BOSTON, TX 75570

APPENDIX G

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

8/19/2020

14-18-00547-CR

HAYWOOD-WATSON, RICKY - Tr. Ct. No. 1494189

PD-0370-20

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Deana Williamson, Clerk

RICKY HAYWOOD-WATSON
TELFORD UNIT - TDC # 2206869
3899 STATE HWY 98
NEW BOSTON, TX 75570

APPENDIX H

PENAL CODE

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 21. SEXUAL OFFENSES

Sec. 21.01. DEFINITIONS. In this chapter:

(1) "Deviate sexual intercourse" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(B) the penetration of the genitals or the anus of another person with an object.

(2) "Sexual contact" means, except as provided by Section 21.11, any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(4) "Spouse" means a person to whom a person is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1979, 66th Leg., p. 373, ch. 168, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 203, ch. 96, Sec. 3, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 739, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.124, eff. September 1, 2005.

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN.

(a) In this section, "child" has the meaning assigned by Section 22.011(c).

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether

the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense.

(c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws:

(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 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4);

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a)(7) or (8);

and

(8) compelling prostitution under Section 43.05(a)(2).

(d) 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. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

(e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

(f) A defendant may not be charged with more than one count under

Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.

(g) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than five years older than:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;

(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and

(3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

(h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.17, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.04, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 31, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 2, eff. September 1, 2017.