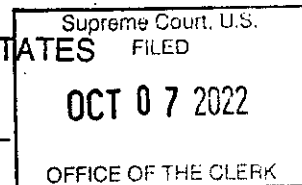


No. 22-5825

IN THE

SUPREME COURT OF THE UNITED STATES



Ahmed R. Morning — PETITIONER
(Your Name)

vs.

John M. Lawrence et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ahmed R. Morning # 378188
(Your Name)

Louisiana State Penitentiary
(Address)

Angola, Louisiana 70712
(City, State, Zip Code)

(225) 655-4411
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether the State trial court erred by imposing an unconstitutionally harsh and excessive sentence?
- 2) Whether the holding in *Ramos v. Louisiana*, 590 U.S. —, 140 S.Ct. 1390, 206 L.Ed. 2d 583 (2020), invalidated La. R.S. 14:42(D)(1)?
- 3) Whether the State trial court is without jurisdiction by imposing sentence under unconstitutional statute? La. R.S. 14:42(D)(1).
- 4) Whether the "substantive rule" exception in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989), can invoke the jurisdictional exception to the finality rule?
- 5) Whether the retroactive application in *Ramos v. Louisiana*, 590 U.S. —, 140 S.Ct. 1390, 206 L.Ed. 2d 583 (2020), applies to Petitioner's case?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Attorney General for the State of Louisiana,
Jeff Landry.

Filing And Service Of Documents

In a proceeding from any court of the United States, as defined by 28 U.S.C. § 451, the initial pleading, motion, or paper shall state whether or not that court, pursuant to 28 U.S.C. § 2403(b), has certified to the state attorney general the fact that the constitutionality of a statute of State was drawn into question.

On May 15, 2019, the U.S. Magistrate Judge, directed the clerk to provide a copy of the Petition and his order on the Attorney General for the State of Louisiana

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☒ reported at State Ex Rel. Morning v. State, 2014-KH-2354 La. 2/19/16; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Louisiana Second Circuit court appears at Appendix D to the petition and is

☒ reported at State v. Morning, 49300 La. App. 2d Cir. 2014; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 23, 2022.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Feb. 19, 2016.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A state court jury must be unanimous to convict a criminal defendant of a serious offense.

U.S. Const. Amend. VI

... nor shall any State deprive any person of life, liberty, or property, without due process of law.

U.S. Const. Amend. XIV

STATEMENT OF THE CASE

A. State Court Proceedings

Petitioner was convicted in the Twenty Sixth Judicial District Court, State of Louisiana, for the alleged crime of aggravated rape in violation of La. R.S. 14:42(3).

Petitioner was subsequently sentenced to serve life imprisonment without the benefit of probation, parole, or suspension of sentence. Petitioner objected and filed a written motion to reconsider sentence on the ground he was convicted by a 10 to 2 jury vote, and a life sentence on a 10-2 vote is unconstitutionally excessive and violates several of his constitutional rights to be sentenced to life in prison on a 10-2 verdict. The trial court denied the motion.

Petitioner then filed a timely motion for appeal which was granted by the trial court.

On direct appeal, Petitioner raised as issue no. 2, Excessive Sentence: Whether the trial court erred by imposing an unconstitutionally harsh and excessive sentence? Because he was convicted by only ten members of his jury, two jurors found the State failed to meet its burden of proof. Despite this reasonable doubt, Petitioner is to be incarcerated for life. The State argued that the sentence imposed [was] mandated by statute. La. R.S. 14:42(1)(1).

On October 1, 2014, the Louisiana Second Circuit Court of Appeal affirmed Petitioner's sentence. State v. Morning, 49300-KA La. App. 2d Cir. 2014.

Petitioner sought certiorari in the Louisiana Supreme Court, which denied relief on February 19, 2016. State Ex Rel. Morning v. State, 2014-KH-2354.

B. Federal Court Proceedings

On March 12, 2019, Petitioner timely filed his Petition for Writ of Habeas Corpus On Appeal, in the U.S. District Court, Western District of Louisiana. Containing the original excessive sentence claim as ground no. 2.

While Petitioner's case was pending in the District Court, this Court, the U.S. Supreme Court, repudiated *Apodaca* and held that a state court jury must be unanimous to convict a criminal defendant of a serious offense. *U.S.C.A. § 14*.

Ramos v. Louisiana, 590 U.S. —, 140 S.Ct. 1390, 206 L.Ed. 2d 583 (2020). Invalidating the state statute, La.R.S. 14:42(D)(1).

The Judiciary Act of 1789, states that courts of the United States... shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States. Shortly, this Court granted certiorari in *Edwards*

v. Vannoy, 141 S.Ct. 1547 (2021), and stated: "under the Court's holdings in Ramos and this case, criminal defendants whose cases arise in the future will have the benefit of the jury-unanimity right announced in Ramos." *Morning v. Vannoy*, Civil Docket Case #: 5:19-cv-00348-EEF-MLH.

On October 25, 2021, the Magistrate Judge filed his Report and Recommendations, (R&R), relying in large part on the state court of appeal denial to ground 2.

But overlooked both Ramos and Edwards' cases.

On November 1, 2021, Petitioner timely filed his specific written objection to the R&R, arguing the overruling of *Apodaca* invalidated the state law, and Ramos applies retroactively to Petitioner's case.

On March 9, 2022, the District Court entered, filed, and closed Petitioner's case the same day.

Petitioner timely filed a notice of appeal.

Thereafter, the District Court filed a second judgment on March 22, 2022, and backdated the filing date to

March 9, 2022. On April 7, 2022, the District Court contended Petitioner was provided Appellate Counsel.

On March 25, 2022, the U.S. Court of Appeals for the Fifth Circuit, in its instructions, instructed Petitioner to file a "Motion" for Certificate of Appealability. (COA).

And to cite his case no. as 5:19-cv-348 for the District Court. On August 23, 2022, the Circuit Judge denied

REASONS FOR GRANTING THE PETITION

The general power of issuing [this] "Great Writ," is a power given to this Court by the common law. Congress has also given this power to this Court by Section 14 of the Judiciary Act of 1789, for the general purpose of justice and protection of the liberty of the citizen.

Ground 2, Excessive Sentence.

At the outset of this argument, Petitioner avers that the lower court's below has made an illegal and erroneous order, and Petitioner pray this Court correct the error.

In *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717 (1880), this Court held: if the laws are determined to be unconstitutional, the prisoner should be discharged.

The relevant questions is whether the holding in *Ramos v. Louisiana*, 590 U.S. —, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020), that overruled this Court's 1972 decision in *Apodaca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184, invalidated La.R.S.14:42(D)(1); and, whether the state trial court imposed sentence under unconstitutional statute as in *Ex parte Siebold*, *supra*. ??

In *Edwards v. Vannoy*, 141 S.Ct. 1547 (2021),

Mr. Justice Kavanaugh, delivered the opinion of the Court and commands a majority, and stated: "to properly assess the implications for criminal defendants, [one] should assess the implications of *Ramos* and today's ruling together." See: *Morning v. Vannoy*, Case no. 5:19-cv-00348-EEF-MLH.

The federal question in ground 2 didn't come as a surprise, in fact, it put the State on notice that their sentencing statute was suspect, when Petitioner timely filed in the District Court within the 1-yr. limitation period contained in the Antiterrorism and Effective Death Penalty Act of 1996, (AEDPA). And the state court relied solely on state law in rejecting that claim. See: *State v. Morning*, 49300-KA La. App. 2d Cir. 2014. Appendix D.

The State together foreseen the opportunity, now every juvenile offender is pending on post conviction for resentencing under *Morning v. Vannoy*, supra. Because new substantive rules which alter "the range of conduct or the class of persons that the law punishes," retroactively apply on federal collateral review. *Schiro v. Summerlin*, 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed. 2d 442 (2004). The State should concede.

In *Edwards*, supra; Mr. Justice Thomas, joined the majority in full, and filed a concurring opinion joined by Mr. Justice Gorsuch, and explained: Congress, through AEDPA, has made clear that federal courts cannot provide relief in this case. See: *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 193 L.Ed. 2d 599 (2016) (Mr. Scalia, J., dissenting); See

also: *Ex parte Bollman*, 4 Cranch 75, 94, 8 U.S. 75, 2 L. Ed. 554 (1807) (Mr. Marshall, Ch. J.) ("[T]he power to award the writ by any of the courts of the United States, must be given by written law.") *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L. Ed. 334 (1989), 'substantive rules exception, which place certain conduct "beyond the power of the criminal law-making authority to proscribe," can invoke jurisdictional exception to the finality rule.

Courts which originate in the common law possess a jurisdiction which must be regulated by their common law, until some statute shall change their established principles; but courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction. See: *Ex parte Bollman*, 4 Cranch 75, 94, 8 U.S. 75, 2 L. Ed. 554 (1807) Mr. Marshall, Ch. J.

The District Court accepted jurisdiction to the federal question in ground 2 in the pleadings. See: Appendix B, docket text sheet by District Court, date filed 3/12/2019.

During oral arguments in *Edwards*, *supra*, case, Mrs. Justice Barrett, stated with force: 'there's another case pending with a 10-2, that may have been convicted on inadequate, insufficient evidence.' The Petitioner is factually innocent; was denied a fundamentally fair trial, and being held in custody pursuant to an unconstitutional law, as in *Ex parte Siebold*, *supra*

By Article XIV of the Amend... nor shall any State deprive any person of life, liberty, or property without due process of law. See: U.S. Const. Amend. XIV.

The District Court failed to give appropriate deference to the statute command as required by 28 U.S.C. § 2243; to determine the facts and dispose of the case summarily, as 'law and justice require.' See: Appendix B, District Court erroneous order. It's the District Court that makes the initial determination to which the litigant is entitled to in the federal courts. The District Court denied relief in deference to the state courts acceptance of the trial courts denial to the Petitioner's excessive sentence claim. That the sentence [was] mandated by statute. And denied a COA stating: 'Petitioner failed to establish a constitutional violation.' That's illegal and erroneous. I timely filed within the 1-yr. of AEDPA and the state courts relied on state law, not Apodaca, in rejecting that claim. See: Appendix D, state court of appeal. The Court of Appeals for the Fifth Circuit, should have proceeded by de novo review. The Circuit Judge denied a COA based on the District Court's determination. See: Appendix A, Court of Appeals denial of COA. That's illegal and erroneous. The District Court overlooked both Ramos and Edwards cases. But the Circuit Judge contended I argued my sentence is invalid under Ramos, rather than the sentencing statute and overlooked Edwards case.

There remains the questions whether Petitioner has made a substantial showing of a jurisdictional violation as in *Ex parte Siebold*, *supra*, and whether reasonable jurists could debate Petitioner's ability to obtain habeas relief in the absence of AEDPA??

A "circuit justice or judge," in deciding whether to issue a COA, must "look to the District Court's application of AEDPA to [a habeas petitioner's] constitutional claims and ask whether that resolution was debatable amongst jurists of reason." See: *Miller-El v. Cockrell*, 537 U.S. 322, 350, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (Mr. Justice Scalia concurring).

Petitioner has made a substantial showing that the state trial court imposed sentence under unconstitutional Statute and that the District Court's decision is debatable among jurists of reason. Demonstrating a "substantial showing of a constitutional right." See: 28 U.S.C. § 2253(c)(2). Petitioner asserts that he has satisfied this standard by demonstrating that jurists of reason could disagree with the District Court's resolution of my constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. See: *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

Moreover, Petitioner asserts that he has met this test by showing that his Petition should have been resolved

in a different manner or that the issues presented are adequate to deserve encouragement to proceed further. See: *Barefoot v. Estelle*, 103 S.Ct. 3383 (1983).

The Petitioner avers that the cases of *Ex parte Bollman*, *supra*, and *Ex parte Siebold*, *supra*, are the authority for the claim of the Petitioner.

The state trial court imposed sentence under unconstitutional statute and acquire no jurisdiction of the cause, *Siebold*.

As Mr. Chief Justice Marshall says: "the power, to award writs of habeas corpus is conferred expressly on this Court by the fourteenth section of the judicial act, and has been repeatedly exercised." *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 209, 7 L. Ed. 650 (1830).

Morning v. Vannoy, *supra*, is the born enemy of criminal defendants.

The Petition for Writ of Habeas Corpus On Appeal now applied for is founded upon the provision of the Judiciary Act of 1789.

The Petitioner's sentence of imprisonment are illegal and void.

State authorities and prisoners scheming together on how to keep [me] in custody that's unlawful, every since the Magistrate Judge issued his memorandum order to the Attorney General of the State of Louisiana and the Warden. See: Appendix

B, memorandum order, dated May 15, 2019. Whether its false imprisonment where the judgment is void?

Petitioner has a right to the writ and should be discharged.

The statutes that's been disregarded are important.

The relevant habeas corpus statutes are 28 U.S.C. § 2241

and 2254. Section 2241 (C) provides that "the writ of habeas corpus shall not extend to a prisoner unless... (3) [he] is in custody in violation of the Constitution or laws or treaties of the United States...." Section 2254 provides in pertinent part: (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that [he] is in custody in violation of the Constitution or laws or treaties of the United States.

This Court has the 'power' generally of issuing the writ of habeas corpus, for the purpose of relieving from illegal imprisonment, and for the protection of the citizen.

It is clear, not only from the language of §§ 2241 (C) (3) and 2254 (a), but also from the common-law history of the writ, is to secure release from unlawful custody.

The Ramos decision is 'clearly foreshadowed' [in] today's decision. And will effect the nation to question 4.

Petitioner is entitled to the writ, as he has shown rights protected by the Constitution and laws of the United States, that mirrors this Court's subsequent decisions.

See: *Ex parte Bollman*, *supra*; *Ex parte Lange*, 18 Wall. 163, 176, 21 L. Ed. 872 (1874); *Ex parte Siebold*, *supra*. Wherefore, Petitioner asserts he has an jurisdictional

claim regarding the overruling of Apodaca in Ramos, while Petitioner's case was pending on direct appellate review.

Under the Constitution of the United States, and the common law, this Court have already come to the conclusion that the sentence of the State trial court under which the Petitioner is held a prisoner is illegal and void because the State trial court imposed sentence under unconstitutional statute. See:

Edwards, *supra*; *Ex parte Siebold*, *supra*. *Morning v.*

Vannoy, *supra*, returns this Court back to its traditional rule: habeas corpus do not apply to a prisoner sentence

by a trial court with valid jurisdiction, and allow reconsid-

eration of cases that watershed rules. For example: *Montgomery v. Louisiana*, 577 U.S. 190, 198, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016).

As the Petitioner's champion, Mr. Justice Gorsuch joined by

Mr. Justice Thomas concurring, in *Edwards*, *supra*, says: If Teague pointed us back in the direction of the traditional rule, each of the cases that has followed in its wake has edged us, step by step, closer still.

Based on the above, Petitioner pray the Court grant the writ of habeas corpus in this case accompanied by the writ of certiorari.

Because the Ramos and Edwards Court's say Petitioner must be discharged.

Morning v. Vannoy, *supra*, is a friend to all courts.

And will protect and serve the interest of the public and victims of violent crimes.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ahmed R. Manning

Date: October 4, 2022