No. _____

In The
Supreme Court of the United States

KYRAN JAVON VAUGHN,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The State Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question before this court is as follows:

Whether the rights afforded criminal defendants in *Ramos* apply retroactively to a case on direct review of the sentence only, given *Griffith*'s holding that new rules for the conduct of criminal prosecutions be applied retroactively to all state "cases pending on direct review or not yet final."

Although the Louisiana Supreme Court denied Kyran Javon Vaughn's writ of certiorari in 2019 that sought to reverse his 10-2 conviction, it remanded the case to the district court to consider a new sentence. *State v. Vaughn*, 2018-01750 (La. 11/25/19), ___ So.3d ___, App. 30. As Vaughn languished in jail, this court ruled in *Ramos v. Louisiana*, ___ U.S. ___, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020), that non-unanimous convictions, which persisted in Louisiana and Oregon, are unconstitutional. Vaughn was later re-sentenced to a lesser term. Thereafter, he filed a direct appeal, in part because his case remained in the "direct review pipeline" under *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), and was entitled to a new trial.

The state appellate court held Vaughn was entitled to a new trial under *Ramos* and *Griffith*. *State v. Vaughn*, 2021-0521, p. 7 (La. App. 1 Cir. 12/30/21) (unreported). App. 20. On granting the state's writ of certiorari, the Louisiana Supreme Court reversed,

QUESTION PRESENTED FOR REVIEW –
Continued

holding 4-3 that Vaughn's conviction was final and, while he had the right to appeal imposition of a new sentence, he had no right to further challenge the conviction or benefit from the *Ramos* decision. *State v. Vaughn*, 2022-00214 (La. 05/05/23), ___ So.3d ___, App. 1. The court denied rehearing. App. 19.

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

State of Louisiana, through the St. Tammany Parish District Attorney's Office.

Kyran Javon Vaughn, a defendant denied a new trial under *Ramos* as applied by *Griffith v. Kentucky.*

LIST OF RELATED CASES

State v. Vaughn, 2018-0344 (La. App. 1 Cir. 09/24/18), 259 So.3d 1048

State v. Vaughn, 2018-01750 (La. 11/25/19), 283 So.3d 494

State v. Vaughn, 2021-0521 (La. 12/30/21) (unreported)

State v. Vaughn, 2022-00214 (La. 05/05/23), 362 So.3d 363

State v. Vaughn, 2022-00214 (La. 06/27/23), 365 So.3d 515 (reh'g denied)

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A non-unanimous Louisiana jury (10-2) found Vaughn guilty of the responsive crime of first degree robbery, and by the same 10-2 vote, guilty of obstruction. Vaughn was sentenced as an habitual offender to 20 years hard labor for the robbery conviction and ten years for the obstruction conviction, with the sentences to run concurrently. *State v. Vaughn*, 2018-0344, p. 1; 259 So.3d at 1048.

The Louisiana Supreme Court granted Vaughn's writ application. The court vacated the habitual offender sentence and remanded to the district court for re-sentencing in light of *State v. Lyles*, 2019-0203 (La. 10/22/19), 286 So.3d 407, which noted recent legislative changes that provided for lesser sentences.[1] The court otherwise denied the application. *Vaughn*, 2018-01750 (La. 11/25/19), 283 So.3d 494. App. 30.

More than nine months later, the district court reduced Vaughn's sentence by two years, re-sentencing

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[1] In *Lyles*, the Louisiana Supreme Court ruled that 2017 La. Act. 282, § 2, which amended the cleansing period between expiration of correctional supervision for one offense and commission of the next offense on the habitual defender ladder became effective November 1, 2017 and had prospective application only to offenders whose convictions became final on or after November 1, 2017, was not affected by 2018 La. Act. 542, § 1 (effective August 1, 2018), which affected the penalty calculation granted by the previous act.

The court in *Lyles* directed the district court to apply the version of the Habitual Offender Law, La. R.S. 15:529.1, as amended by 2017 La. Act. 282, and before its amendment by 2018 La. Act. 542. *Lyles*, 2019-00203, p. 6; 286 So.3d at 411.

him to 18 years as a second-felony offender. After filing various trial court motions, Vaughn appealed. The Louisiana First Circuit found Vaughn's conviction and sentence were not final until he exhausted his appellate rights and, therefore, under *Griffith v. Kentucky*, he was entitled to a new trial under this Court's opinion in *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390, 206 L.Ed.2d 583, that found Louisiana's non-unanimous verdict scheme unconstitutional. *State v. Vaughn*, 2021-0521 (La. 12/30/21) (unreported). App. 20.

The state sought and was granted an application for writ of certiorari from the Louisiana Supreme Court. On the merits, the Louisiana Supreme Court, 4-3, held that under the precedent of *State v. Lewis*, 350 So.2d 1197 (1977), Vaughn's conviction was final and therefore his case could not be reviewed as pronounced by *Griffith*, supra. *State v. Vaughn*, 2022-00214 (La. 05/05/23), 362 So.3d 363, App. 1. By the same 4-3 vote, the Louisiana Supreme Court denied Vaughn's application for rehearing. *State v. Vaughn*, 2022-00214 (La. 06/27/23), 365 So.3d 515 (reh'g denied). App. 19.[2]

BASIS FOR SUPREME COURT JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1257(a). *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 464

[2] The supreme court decision orders a remand to the appellate court for it to consider the remaining issues, but under its ruling, the conviction is final and review by this court is proper.

(2005). (Appellate jurisdiction to reverse or modify a state-court judgment is lodged, . . . by 28 U.S.C. § 1257, exclusively in the Supreme Court); *Montgomery v. Louisiana*, 577 U.S. 190, 197, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (If the Constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by this Court, citing *Griffith*).

STATUTORY OR CONSTITUTIONAL PROVISIONS INVOLVED

SIXTH AMENDMENT

In 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, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

FOURTEENTH AMENDMENT

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

The Louisiana Supreme Court has denied Vaughn his right under *Griffith* to a new trial as this court ordered in *Ramos* for all defendants convicted by non-unanimous verdicts. He remains incarcerated because the Louisiana Supreme Court parsed his conviction and sentence under a 46-year-old precedent antithetical to federal constitutional definitions of finality. Before this matter, the *Lewis* decision had been cited only twice, neither time by a state court. In each federal cases, the court found *Lewis* wrongly interpreted federal court precedent that a case remains in the appellate pipeline until both his conviction *and* sentence have become final. *Pilinski v. Goodwin*, 2017 WL 2115493 (W.D. La. 2017), *recommendation adopted*, 2017 WL 2115109 (W.D. La. 2017), (defendant's conviction was final since "he did not appeal his conviction *and* sentence"); *Scott v. Hubert*, 635 F.3d 659 (5th Cir. 2011), *cert. denied*, 565 U.S. 1060, 132 S.Ct. 763, 181 L.Ed.2d 485 (2011) (finding, without citation, that the federal district court erred – *see Scott v. Hubert*, 2009 WL 5851072, n. 6 (M.D. La. 2009), citing *Lewis* – in finding that because Scott's sentence was vacated and set aside and the case remanded for re-sentencing, his conviction became final 14 days after judgment was rendered upon the failure of Scott to file an application

for a rehearing by the appellate court or seek a writ of review by the Louisiana Supreme Court).

Ironically, the Louisiana Supreme court found Vaughn was eligible for sentencing under *Lyles*, supra, because his conviction and sentence were not final until he fully exercised his appellate rights or those rights expired by rule because Vaughn did not exercise them. The court ignored its own precedent in refusing to apply this Court's *Ramos* decision.

ARGUMENT

Vaughn is entitled to *Ramos* relief because he remained in the pipeline, as defined by *Griffith*, until his appeals on his sentence were final.

Vaughn is entitled to have this Court grant his writ of certiorari to reverse, remand, and order the Louisiana Supreme Court to grant him a new trial.

The Louisiana Supreme Court incorrectly decided Vaughn's case was not pending on direct review when *Ramos* was decided. Because Vaughn sought a direct appeal of a new sentence, his case was not final. Under *Griffith*, Vaughn did not have a final judgment from which he could seek post-conviction or habeas relief. *See*, *e.g.*, *United States v. Dodson*, 291 F.3d 268 (4th Cir. 2002) (holding that where court of appeals affirms convictions but vacates sentence and remands for re-sentencing, judgment of conviction is not final). As argued below and as quoted by Justice Genovese in dissent:

"There is no break in this case. And because there is no break, [Defendant]'s case remains in the appellate posture rather than the post-conviction stage, which only applies to a final conviction and sentence." *Vaughn*, 362 So.3d at 369.

For the purpose of retroactivity of a new rule, a state conviction and sentence are final when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been denied. *Griffith*, 479 U.S. at 321, n. 6. This Court has consistently held that in the context of a state prosecution, "[t]he general rule is that finality . . . is defined by a judgment of conviction *and* the imposition of sentence." *Wayne Brooks, Inc. v. Indiana*, 489 U.S. 46, 109 S.Ct. 916, 103 L.Ed.2d 34 (1989). (Emphasis added). *See Berman v. United States*, 302 U.S. 211, 212, 58 S.Ct. 164, 82 L.Ed.2d 204 (1937) ("Final judgment in a criminal case means sentence. The sentence is the judgment."). In other words, "[a] judgment of conviction includes both the adjudication of guilt *and* the sentence." *Deal v. United States*, 508 U.S. 129, 132, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993). (Emphasis added). If the decision stands, Louisiana will be an aberration from otherwise generally accepted principles of finality on the heels of *Ramos* which itself recognized that Louisiana and Oregon sentencing requirements were aberrations for other reasons. The judgment of conviction will be final even if the court remands for a considered sentence rather than merely for ministerial correction.

In *Miller v. Bell*, 655 F.Supp.2d 838 (E.D. Tenn. 2009), *affirmed*, *Miller v. Colson*, 694 F.3d 691 (6th Cir. 2012), *cert. denied*, 569 U.S. 1007, 133 S.Ct. 2739, 186 L.Ed.2d 197 (2013), the court decided the mental health expert rule adopted in *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985), was not time barred, but applicable, since this court's decision was decided after defendant's conviction was affirmed on appeal but before the end of direct appeal of his resentencing, when this court denied certiorari in *Miller v. Tennessee*, 497 U.S. 1031, 110 S.Ct. 3292, 111 L.Ed.2d 801 (1990). In finding *Ake* applied to its habeas review of the state court conviction, the federal court cited the string of cases that hold "in the context of a criminal prosecution, finality is normally defined by the imposition of the sentence." *Flynn*, supra. The Louisiana Supreme Court departed from that normal definition.

A Colorado appellate court confronted a similar issue when *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) was decided three days after another division confirmed the convictions but vacated the sentence of Brett Sharp for sexually assaulting his child. Sharp argued because *Crawford* announced a new rule for the conduct of criminal prosecutions, it should be applied to all cases, both state and federal, pending on direct review or not yet final. The appellate court formed the question presented here: Is a defendant's case final when he has exhausted all appeals regarding only his convictions, or not until he has exhausted all appeals regarding his convictions *and* sentencing? Based on *Griffith*, a series of federal

court cases, and in part upon the state criminal procedure definition of "judgment of conviction," the court found the defendant should benefit from the *Crawford* rule since the conviction was not final. *People v. Sharp*, 143 P.3d 1047, *judgment vacated, sub. nom. Sharp v. People*, 2006 WL 2864916 (Colo. Sup. Ct. 2006) (en banc) (not reported).

The *Sharp* appellate court found its application of a bright-line rule, that finality requires both conviction and sentence, would allow defendants to exhaust appeals on direct review before bring collateral attacks. Thus, under the rule, "a defendant will have no doubt when the judgment becomes final and will be able to coordinate his direct and collateral appeals accordingly." *Sharp*, 143 P.3d at 1050.[3]

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[3] The *Sharp* court noted a handful of cases that have concluded that a judgment of conviction is "final" for retroactivity purposes once the state appellate courts have affirmed the defendant=s convictions, regardless of a remand for re-sentencing. *See Richardson v. Gramley*, 998 F.2d 463 (7th Cir. 1993), *cert. denied*, 510 U.S. 1119, 114 S.Ct. 1072, 127 L.Ed.2d 390 (1994) (defendant's conviction final before *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), decided, even though defendant's re-sentencing remained); *United States v. Baron*, 721 F.Supp. 259 (D.Haw. 1989), *habeas granted, judgment affirmed, sentenced vacated*, 860 F.2d 911 (9th Cir. 1988), *cert. denied*, 490 U.S. 1040, 109 S.Ct. 1944, 104 L.Ed.2d 414 (1989) (defendant's conviction final, for purpose of determining retroactive application of *Gomez v. United States*, 490 U.S. 858, 109 S.Ct. 2237, 104 L.Ed.2d 923 (1989), where, although the appellate court had remanded for re-sentencing, it had affirmed defendant's conviction, and the United States Supreme Court had denied certiorari); *People v. Holman*, 132 Ill.2d 128, 138 Ill.Dec. 155, 547 N.E.2d 124 (1989), *cert. denied*, 497 U.S. 1032, 110 S.Ct. 3296, 111 L.Ed.2d

This court has consistently held that in a criminal case, final judgment means finality of the sentence; an order remanding for re-sentencing or voiding sentence is neither a final nor a valid judgment. The *Griffith* court defined final as a judgment of conviction rendered, the availability of appeal exhausted, and the time for seeking review by this court either elapsed or a petition denied, to achieve greater uniformity in its retroactivity determinations. In creating finality, this court resolved the prior law of adjudicating cases that had not run the full course of appellate review, *Griffith*, 479 U.S. at 323. This Court found it necessary that finality was not lost because execution of the judgment remained undetermined or suspended.

In sum, the *Griffith* court presented a meaningful decision that new rules for the conduct of criminal prosecutions be applied retroactively to all state "cases pending on direct review or not yet" final and holds that a case remains pending on direct review and not yet final until direct review of the conviction *and* the sentence is exhausted.

Because *Ramos* was decided before Vaughn was re-sentenced and he had not exhausted his right of direct review – at no time had he, nor could he have, sought collateral (habeas) review – the Louisiana

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804 (for purpose of determining whether *Batson* applied, defendant's conviction was final, despite appellate court's remand for re-sentencing, because appellate court had decided his direct appeal and the United States Supreme Court had denied his petition for certiorari).

Supreme Court erred in denying him a new trial under *Griffith*.

CONCLUSION

Given that Vaughn's case still remains under direct review, this Court should grant this writ of certiorari to apply *Griffith* or to determine whether "cases pending on direct review or not yet final" include a case in which the conviction is affirmed on direct appeal but the case is remanded for resentencing.

Respectfully submitted,

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