No. 23-307

In the Supreme Court of the United States

KYRAN JAVON VAUGHN,
Petitioner,

v.

STATE OF LOUISIANA,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Louisiana

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The petitioner was tried and convicted by 10-2 verdict. He did not object to the non-unanimous nature of the jury's verdict during the proceedings leading to conviction and did not raise the issue when appealing his conviction. Ultimately, his conviction was affirmed, but his sentence was vacated based upon a change in state law regarding the sentencing of habitual offenders. The petitioner was then re-sentenced. The petitioner first objected to the non-unanimous nature of the jury's verdict after his resentencing. Under these circumstances, the Louisiana Supreme Court held that the petitioner is not entitled to a new trial under *Ramos v. Louisiana*, 139 S. Ct. 118 (2019), or *Griffith v. Kentucky*, 479 U.S. 314 (1987).

Does this holding warrant the exercise of this Court's discretionary jurisdiction?

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STATEMENT OF THE CASE

This case arises from a robbery that occurred in 2016. Following a jury trial, Kyran Javon Vaughn was convicted of first-degree robbery and obstruction of justice. *See* La. R.S. 14:64.1, 130.1. The jury's verdict was 10-2. The petitioner did not object to the verdict or to the statutory scheme authorizing non-unanimous verdicts. Vaughn was subsequently adjudicated a habitual offender, and the state district court imposed a twenty-year sentence pursuant to Louisiana's Habitual Offender Law. *See* La. R.S. 15:529.1.

Vaughn appealed, but his assignments of error did not address jury unanimity. The issues he raised concerned the sufficiency of the evidence, joinder of the two separate offenses in a single trial, and the length of the sentence. The Louisiana First Circuit Court of Appeal affirmed his convictions and sentences. *State v. Vaughn*, 18-0344 (La. App. 1 Cir. 9/24/18), 259 So.3d 1048 (*Vaughn I*).

Vaughn applied for further review from the Louisiana Supreme Court. In March 2019, while Vaughn's application for review was pending, this Court granted the petition for certiorari in *Ramos v. Louisiana*, 139 S. Ct. 118 (2019).

The Louisiana Supreme Court ruled on Vaughn's application for review in November 2019, and affirmed the defendant's conviction—but vacated his sentence in light of intervening amendments to Louisiana's Habitual Offender Law. The Louisiana Supreme Court then directed the district court to re-sentence

Vaughn. *State v. Vaughn*, 18-1750 (La. 11/25/19), 283 So.3d 494 (*Vaughn II*).[1]

At this point in time, the judgment affirming Vaughn's conviction was final for purposes of Louisiana law, even though he had yet to be re-sentenced. *See State v. Lewis*, 350 So.2d 1197 (La. 1977) (defendant's conviction was affirmed, but his sentence was vacated; his "right to appeal from the imposition of the new sentence" did not encompass any new issues concerning his conviction).

Vaughn could have sought certiorari review from this Court within 90 days of the Louisiana Supreme Court's decision affirming his conviction—that is, on or before February 23, 2020. He did not do so.

The state district court re-sentenced Vaughn in August 2020. By that time, this Court had issued its opinion in *Ramos*.

It was not until after the state district court re-sentenced Vaughn that he first objected to the non-unanimous nature of the jury's verdict. Louisiana's First Circuit Court of Appeal accepted his argument that he was entitled to a new trial pursuant to *Ramos* and *Griffith v. Kentucky*, 479 U.S. 314 (1987). *See State v. Vaughn*, 21-0521 (La. App. 1 Cir. 12/30/21), 2021 WL 6316618 (*Vaughn III*). The Louisiana Supreme Court reversed. *State v. Vaughn*, 22-2014 (La. 5/05/23), 362 So.3d 363 (*Vaughn IV*). The Court

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[1] *Vaughn II* cites *State v. Lyles*, 19-0203 (La. 10/22/19), 286 So.3d 407, which discusses amendments to Louisiana's Habitual Offender Law made by La. Acts 2017, No. 282 and La. Acts 2018, No. 542.

reasoned that the finality of conviction (adjudication of guilt) is distinct from the finality of sentence (length of incarceration), and that *Ramos* applies retroactively only to cases where direct review of the adjudication of guilt is still ongoing. *Vaughn IV*, 362 So.3d at 364.

Vaughn now petitions this Court for a writ of certiorari.

REASONS FOR DENYING THE WRIT

I. THE LOUISIANA SUPREME COURT'S HOLDING DOES NOT CONFLICT WITH *GRIFFITH V. KENTUCKY* OR ANY OTHER DECISION OF THIS COURT.

In *Griffith v. Kentucky*, 479 U.S. 314 (1987), the Court focused its inquiry on *convictions* not yet final. *See id.* at 318, 320, 322.[2] In describing the case, the Court stated: "We granted certiorari in Griffith's case, 476 U. S. 1157 (1986), limited to the question whether the ruling in *Batson* applies retroactively to a state *conviction* pending on direct review at the time of the *Batson* decision." 479 U.S. at 318 (emphasis added). The Court defined the term "final" to mean "a case in which a judgment of *conviction* has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied." *Id.* at 321 n.6. The Court thereafter used the terms "conviction" and "case" interchangeably. For example, it explained:

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[2] In describing a companion case, the Court said: "We granted certiorari, 476 U. S. 1157 (1986), again limited to the question whether the ruling in *Batson* applies retroactively to a federal *conviction* then pending on direct review." 479 U.S. at 320 (emphasis added).

> The rationale for distinguishing between *cases* that have become final and those that have not, and for applying new rules retroactively to cases in the latter category, was explained at length by Justice Harlan in *Desist v. United States*, 394 U. S., at 256 (dissenting opinion), and in *Mackey v. United States*, 401 U. S. 667, 675 (1971) (opinion concurring in judgment).

479 U.S. at 322 (emphasis added).

A review of Justice Harlan's writings shows that his focus was on *convictions*. *See Mackey*, 4010 U.S. at 690–91 (describing the need for a point in time where "attention will ultimately be focused not on whether a *conviction* was free from error but rather on whether the prisoner can be restored to a useful place in the community" and noting "it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal *convictions* that were perfectly free from error when made final"); *id.* at 693 ("Typically, it should be the case that any *conviction* free from federal constitutional error at the time it became final, will be found, upon reflection, to have been fundamentally fair.").

In light of this, the Louisiana Supreme Court focused on the date that Vaughn's *conviction* became final, and concluded that Vaughn's *conviction* was final before the *Ramos* case was decided. *Vaughn IV*, 362 So.3d at 365 (noting the *Griffith* Court's

"pronouncement regarding the finality of a defendant's conviction" and noting that "[t]he defendant does not argue that his convictions are not final").

The decision below does not conflict with *Griffith* given that case's focus on the finality of convictions. The petitioner does not contend that the decision below conflicts with any other decision of this Court. The petition for certiorari should be denied.

II. THE LOUISIANA SUPREME COURT'S HOLDING DOES NOT CREATE A CONFLICT WITH THE DECISIONS OF ANY OTHER COURT.

A. Any Inconsistency Between State Jurisdictions Is a Feature, Not a Flaw, of Our Federal System.

In cases such as this one, which involve a constitutional rule of trial procedure, the lower courts have uniformly construed *Griffith* to refer to the finality of a defendant's conviction in the sense of *adjudication of guilt*.[3] This is so, even though the lower courts have not achieved consistent results,

[3] The date that a defendant's *sentence* becomes final is relevant in the event that a new rule of constitutional criminal procedure pertains to *sentencing*. This is not a case involving a rule of criminal procedure relating solely to sentencing. *See, e.g.*, *State v. Beaty*, 696 N.W.2d 406, 410 (Minn. App. 2005) (looking to the date that the defendant's sentence became final, rather than the date the conviction became final, because the case at issue—*Blakely v. Washington*, 542 U.S. 296 (2004)—"created a new rule governing sentencing departures").

because of variations across jurisdictions about when an adjudication of guilt becomes final.

In some jurisdictions, a conviction (in the sense of an adjudication of guilt) may become final *before* the sentence becomes final. Courts in these jurisdictions have therefore declined to apply a new rule of constitutional criminal procedure retroactively to final convictions in circumstances where the sentence is not yet final. *See, e.g.*, *People v. Holman*, 547 N.E.2d 124 (Ill. 1989) (*Batson* applied retroactively to the penalty phase of the defendant's trial, but not the guilt phase of the defendant's trial, because the adjudication of guilt was final before *Batson* was decided); *Richardson v. Gramley*, 998 F.2d 463 (7th Cir. 1993) (pre-AEDPA habeas case) (*Batson* did not apply retroactively because the defendant's conviction was final, even though re-sentencing remained). The decision of the Louisiana Supreme Court below is in accord with these cases.

In other jurisdictions, an adjudication of guilt is not considered to be final until the sentence is *also* final. These jurisdictions therefore apply new rules of constitutional criminal procedure retroactively to all cases in which the sentence is not yet become final because, by definition, a conviction is not final until the sentence is *also* final. *See, e.g.*, *United States v. Colvin*, 204 F.3d 1221, 1224 & n.3 (9th Cir. 2000) (quoting Fed. R. Cr. P. 32(c)); *People v. Sharp*, 143 P.3d 1047, 1050 (Colo. App. 2005) (quoting Colo. R. Crim. P. Rule 32(c)).

There is no inconsistency here. Federalism by its very nature contemplates that different jurisdictions

will have different laws. The differences in outcomes of these cases is wholly attributable to permissible variations in procedural rules across jurisdictions.

The decision below does not create a conflict which needs to be resolved. For that reason, the petition for certiorari should be denied.

B. There Is No Square Split of Authority.

Vaughn's petition contends that the Louisiana Supreme Court's decision is the source of a split of authority. But the cases Vaughn relies on to support that assertion are based upon notions of finality that are used in contexts other than finality of conviction under *Griffith v. Kentucky*. His argument ignores that the meaning of the terms "conviction" and "final" varies across contexts.

For example, Vaughn cites to *United States v. Dodson*, 291 F.3d 268 (4th Cir. 2002), and *Deal v. United States*, 508 U.S. 129 (1993). Pet. at 5, 6. As noted above, different jurisdictions have different rules about when a conviction becomes final. The Federal Rules of Criminal Procedure define "conviction" in a manner that is inclusive of the sentence imposed as a result of the adjudication of guilt. F.R.Cr.P. Rule 32(c); *Colvin*, 204 F.3d at 1224 & n.3. The petitioner's reliance on *Dodson* and *Deal* are misplaced because the cited portions of those cases expressly rely upon the Federal Rules of Criminal Procedure's definition of what "conviction" means.

The petitioner further relies on *Berman v. United States*, 302 U.S. 211 (1937). Pet. at 6. That case addresses whether a particular district court

judgment was "final" or "interlocutory." The facts of the case were as follows:

> While the appeal was pending and without its withdrawal, petitioner, fearing its dismissal, applied to the District Court for resentence. That court reimposed the prior sentence of imprisonment, again suspending its execution, and added a fine of $1 upon each count. The court did not vacate the prior sentence. Petitioner then appealed from the second sentence.
>
> The Circuit Court of Appeals held that, by reason of suspension of its execution, the first sentence was interlocutory and dismissed the first appeal. Assuming that appeal to be a nullity, the Court of Appeals thought that the District Court had power to resentence; that petitioner could not complain of the fine as it was imposed at his request; and that the second sentence of imprisonment, if taken alone, was interlocutory. The judgment imposing the fine was affirmed and the appeal from the second sentence of imprisonment was dismissed.

Id. at 212. It was against this backdrop that this Court stated that "[f]inal judgment in a criminal case means sentence" and "[t]he sentence is the judgment." *Id.* at 212. The Court ultimately held: "As the first sentence was a final judgment and appeal therefrom was properly taken, the District Court was without

jurisdiction during the pendency of that appeal to modify its judgment by resentencing the prisoner." *Id.* at 214. The question whether a particular district court judgment is ripe for review by a higher court has nothing to do with the determining when a conviction becomes final for purposes of retroactively applying of new constitutional rule of criminal trial procedure.

To support his argument that the Louisiana Supreme Court's opinion creates a split of authorities warranting this Court's attention, Vaugh also cites to *Pilinski v. Goodwin*, 2017 WL 2115493 (W.D. La. 2017), and *Scott v. Hubert*, 635 F.3d 659 (5th Cir. 2011). Pet. at 4. These cases discuss the commencement of the 1-year period of limitations for filing a habeas corpus petition under 28 U.S.C. § 2244(d)(1)(A). That time period is based upon the finality of "judgment." In context, the "judgment" refers to the following statutory text: "an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2244(d)(1). The judgment which causes a person to be "in custody" is the judgment imposing sentence. *See Magwood v. Patterson*, 561 U.S. 320 (2010) (where there was no new adjudication of guilt, but there was a new sentence imposed, the petitioner was not subject to the "second or successive" bar because the new sentence was a new "judgment"). The calculation of the statute of limitations for federal habeas corpus petitions has nothing to do with the determining when a conviction becomes final for purposes of retroactively applying of new constitutional rules of criminal trial procedure.

Finally, the petitioner cites *Wayne Brooks, Inc. [sic] v. Indiana*, 489 U.S. 46 (1989). Pet. at 6. That case discusses when a judgment becomes final within the meaning of 28 U.S.C. § 1257. It states "[t]he general rule is that finality in the context of a criminal prosecution is defined by a judgment of conviction and the imposition of a sentence." 489 U.S. at 54. But it observes there "are, however, exceptions to the general rule." *Id.* at 54–55 (citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)). Because § 1257 does not itself create a hard-and-fast rule about when criminal convictions become final, it cannot be inconsistent with § 1257 to distinguish between a final conviction and a final sentence in the context of new constitutional rules of criminal trial procedure.

The decision below does not create a conflict which needs to be resolved because of the context-dependent nature of the term "final" and because the context here—retroactive application of new constitutional rules of criminal trial procedure—is unique. The petition for certiorari should be denied.

III. THIS CASE IS A POOR VEHICLE BECAUSE THE PETITIONER DID NOT PROPERLY OR TIMELY RAISE THE ISSUE IN THE COURTS BELOW.

This Court's decision in *Griffith v. Kentucky* was premised upon "the principle of treating similarly situated defendants the same." 479 U.S. at 323. This Court's jurisprudence explains that a "similarly situated" person is one who, like the defendant in *Griffith*, preserved the complained-of error for review in a timely way. *See United States v. Booker*, 543 U.S. 220, 268 (2005) (invalidating the U.S. Sentencing

Guidelines and relying on *Griffith* for the proposition that not "every appeal will lead to a new sentencing hearing. That is because we expect reviewing courts to apply ordinary prudential doctrine, determining, for example, whether the issue was raised below and whether it fails the 'plain-error' test."[4]); *see Shea v. Louisiana*, 470 U.S. 51, 58 n.4 (1985) (the retroactive application of a new rule to a case pending on direct review is "subject, of course, to established principles of waiver, harmless error, and the like"); *see also Dick v. Oregon*, 140 S. Ct. 2712 (2020) (Alito, J., concurring) ("I concur in the judgment on the understanding that the Court is not deciding or expressing a view on whether the question was properly raised below but is instead leaving that question to be decided on remand.").

This is reinforced by *Davis v. United States*, which explained:

> Our retroactivity jurisprudence is concerned with whether, as a categorical matter, a new rule is available on direct review as a *potential* ground for relief. Retroactive application under *Griffith* lifts what would otherwise be a categorical bar to obtaining redress for the government's violation of a newly announced constitutional rule. Retroactive application does not,

[4] Louisiana law does not provide for "plain error" review, *State v. Thomas*, 427 So.2d 428, 433 (La. 1982) (*on reh'g*), and the decision below establishes that the defendant is not entitled to relief as a matter of Louisiana law.

> however, determine what "appropriate remedy" (if any) the defendant should obtain. Remedy is a separate, analytically distinct issue.

564 U.S. 229, 243 (2011) (emphasis added) (citations omitted).

It is for this reason that lower federal appellate courts and state courts of last resort have held that, even when a new rule of constitutional criminal procedure has been announced and a defendant's case is pending on direct review, the defendant is not entitled to a remedy if he has not properly preserved the issue for review. *See, e.g.*, *Thomas v. Moore*, 866 F.2d 803, 805 (5th Cir. 1989) (finding that the defendant "is not a defendant whose situation is similar to the defendants in *Batson* [*v. Kentucky*, 476 U.S. 79 (1986)] or *Griffith"* because "he raised no timely objection to the jury selection process."); *McCrory v. Henderson*, 82 F.3d 1243, 1245–46, 1249–50 (2d Cir. 1996) (citing *Griffith* for the proposition that "*Batson* applies retroactively to cases like McCrory's, that were pending on direct appeal at the time *Batson* was decided" but reversing the lower court's decision granting habeas corpus relief because the petitioner did not object timely); *State v. Gomez*, 163 SW 3d 632, 644–45 (Tenn. 2005) ("Where, as here, a new rule is announced while a criminal case is pending on direct review, *Griffith* mandates plenary application of the new rule only if the issue to which the new rule relates has been timely raised and properly preserved"); *United States v. Curbelo*, 726 F.3d 1260, 1266–67 (11th Cir. 2013) ("*Griffith* does not

allow Defendant to get around our usual rule that failing to file a suppression motion waives Fourth Amendment claims, even claims based on a new ruling from the Supreme Court."); *Commonwealth v. Hayes*, 218 A.3d 1260, 1266 (Pa. 2019) ("Appellant is not entitled to retroactive application of *Birchfield* [*v. North Dakota*, 579 U.S. 438 (2016)] based on his failure to preserve the issue below.").

In this case, Vaughn did not object to Louisiana's procedural rules authorizing non-unanimous jury verdicts in the trial court during the proceedings leading to conviction, and he did not object to them on appeal from conviction. Accordingly, even if *Griffith* makes *Ramos* a *potential* ground for relief, the Constitution does not require that this petitioner be granted a remedy.

Because of the procedural posture of this case, specifically the petitioner's failure to timely object to the non-unanimous nature of the jury's verdict, granting the petition for certiorari would be inconsistent with the Court's jurisprudence.

IV. GRANTING CERTIORARI WOULD UNDERMINE THE RATIONALE OF *GRIFFITH*.

As noted above, *Griffith* is based upon treating similarly situated defendants similarly. "Different treatment of two cases is justified under our Constitution only when the cases differ in some respect relevant to the different treatment." 479 U.S. at 327 (citation omitted). "[T]he problem with not applying new rules to cases pending on direct review is 'the actual inequity that results when the Court chooses which of many similarly situated defendants should be

the chance beneficiary' of a new rule." *Id.* at 323 (citation omitted).

The decision of the Louisiana Supreme Court treats similarly situated defendants similarly. Those defendants whose convictions were *not* final when *Ramos* was decided *are* eligible for relief pursuant *Ramos*; those defendants whose convictions *were* final when *Ramos* was decided are *not* eligible.

Granting Vaughn's petition for certiorari would grant him rights not afforded to defendants whose convictions, like his, were final before *Ramos* was decided. Vaughn would become a "chance beneficiary" of the *Ramos* rule solely because of his status as a habitual offender and a remand resulting from amendments to Louisiana's Habitual Offender Law. The happenstance nature of such a remand would result in actual inequity to those defendants whose convictions became final (as Vaughn's did) without remand prior to this Court's decision in *Ramos*.

For this reason as well, the petition for certiorari should be denied.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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