No. 23-307

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

REPLY BRIEF

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ARGUMENT

The State of Louisiana fails to admit that "[t]here 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 state, which only applies to a final conviction and sentence." *State v. Vaughn*, 2022-00214 (La. 05/05/23), 362 So.3d 363, 369. "Thus, [Kyran Vaughn's] case was still on direct review when *Ramos* [*v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020)] was decided." Id. (Genovese, J., dissent). As Justice Genovese explained in dissent, Vaughn's case remained on direct appeal, and was not on post-conviction review.[1]

The Louisiana Supreme Court's attempt to bifurcate a conviction and sentence, now echoed by the State of Louisiana, falls in the face of this court's mandates as to when it holds a case has retroactive application. 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 have been exhausted and either the time for filing a writ

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[1] Two Louisiana Code of Criminal Procedure articles support this opinion. The appeal of a criminal conviction is premature until a defendant has been sentenced. La. C.Cr.P. art. 914; and second, the post-conviction period does not commence until the judgment of conviction *and* sentence have become final under La. C.Cr.P. art. 914 and La. C.Cr.P. art. 922. Under La. C.Cr.P. art. 930.8, a petition for post-conviction relief is premature under a conviction *and* sentence are final. (Emphasis added). These articles comport with *Griffith*, supra.

of certiorari has elapsed or a timely filed petition has been denied. *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), citing *Griffith v. Kentucky*, 479 U.S. 314, 321, n. 6, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987). (Emphasis added). States may not disregard a controlling, constitutional command in their own courts. See *Martin v. Hunter's Lessee*, 1 Wheat. 304, 340-341, 4 L.Ed. 97 (1816). *Montgomery*, supra.

In other words, merely because the finality of state convictions may be a state interest, the finality of a state conviction is not a federal interest, especially when the retroactivity of a new rule is at issue. The decision in *Griffith* is the touchstone for retroactivity of new federal rules and bound states to that judgment. *Griffith*, 479 U.S. at 328 (new rules are "to be applied retroactively to all cases, *state or federal*, pending review or not yet final"). *Danforth v. Minnesota*, 552 U.S. 264, 300, 128 S.Ct. 1029, 1053, 169 L.Ed.2d 859 (2008) (Roberts, C.J., dissent). Moreover, a state alone may "evaluate and weigh the importance of finality interests, 128 S.Ct. at 1040-1041, when it decides which substantive rules of criminal procedure state law affords; it is quite a leap to hold . . . that they alone can do so in the name of the Federal Constitution." *Danforth*, 552 U.S. at 301, 128 S.Ct. at 1053.

The State of Louisiana, in brief, relies primarily on newly-created bifurcated appeal/post-conviction procedure now created under *Vaughn*. While the State will certainly now desire to subject criminal defendants to this mixed review procedure, rules of this

Court, particularly when a new rule's retroactivity is at issue, require a different conclusion. See *Rashad v. Lafler*, 675 F.3d 564 (6th Cir. 2012) (clock for AEDPA's statute of limitations began when applicant's conviction *and* re-sentence became final by the conclusion of direct review. Relying upon *Burton v. Stewart*, 549 U.S. 147, 127 S.Ct. 793, 166 L.Ed.2d 628 (2007) (per curiam)[2] (final judgment in a criminal case means sentence; the sentence is the judgment), the *Rashad* court found if statute of limitations began after the initial sentence, not re-sentence, Rashad would have to bifurcate the claims arising from his criminal case into distinct judgments – one related to the conviction, one related to the sentence. Id., 675 F.3d at 568.

Besides splitting each criminal judgment into two, the State's approach would require petitioners to comply with different limitations clocks for each judgment and, it is worth adding, would require the State to defend two cases rather than one. That approach would not advance AEDPA's goal of streamlining federal habeas proceedings. *Rashad*, 675 F.3d at 568.

The *Rashad* decision is quite instructive since it cites *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), which found *State v. Lewis*, 350 So.2d 1197 (La.

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[2] See *Wayne Brooks, Inc. v. Indiana*, 489 U.S. 46, 109 S.Ct. 916, 103 L.Ed.2d 34 (1989) (the general rule is that finality . . . is defined by a judgment of conviction and the imposition of sentence); *Deal v. United States*, 508 U.S. 129, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993) (a judgment of conviction includes both the adjudication of guilt and the the sentence).

1977) – the basis for the 4-3 majority herein – could not bifurcate a conviction and re-sentence to deny federal relief. Citing *Lewis*, the federal district court in *Scott* held even though the defendant's sentence was vacated and set aside and the case remanded to the trial court for re-sentencing, his conviction became final 14 days after judgment was rendered upon Scott's failure to file an application for a rehearing by the appellate court or to seek a writ of review by the Louisiana Supreme Court. *Scott v. Hubert*, 2009 WL 5851072 (U.S.D.C., M.D., La. 2009).

Reversing on appeal, *Scott v. Hubert*, 635 F.3d 659, *cert. denied*, 565 U.S. 1060, 132 S.Ct. 763, 181 L.Ed.2d 485 (2011), the Fifth Circuit held that the conviction and sentence were not final – essentially the defendant remained in the appeal pipeline – until finality of appellate review of the re-sentence. The court stated:

> Therefore, we hold that when a state prisoner's conviction is affirmed on direct appeal but the sentence is vacated and the case is remanded for resentencing, the judgment of conviction does not become final within the meaning of 28 U.S.C. §2244(d)(1)(A) until both the conviction and the sentence have become final by the conclusion of direct review or the expiration of the time for seeking such review.

Scott, 635 F.3d at 666.

The State's argument seeks to avoid the clarity federal courts have provided and muddy the waters by bifurcating that which should remain as one.

While state law has no bearing on the finality inquiry under AEDPA, *Scott*, 635 F.3d 664, distinguishing Lewis, state law cannot impede the application of a new rule by this Court. Since 1937, this court has held that the final judgment in a criminal case means sentence; the sentence is the judgment. *Berman v. United States*, 302 U.S. 211, 58 S.Ct. 164, 82 L.Ed.2d 204 (1937). See *e.g. Miller v. Bell*, 655 F.Supp.2d 838 (U.S.D.C. E.D. Tenn. 2009) (Because *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985) was adopted before finality of Miller's direct appeal of his re-sentencing, the *Ake* issue was properly before the court).[3]

CONCLUSION

The Louisiana Supreme Court has now upended the well-established concept of sentence as judgment by finding that the conviction alone may serve as the judgment such that a criminal defendant exits the pipeline solely upon the conviction's finality. Because Vaughn's appeal of his resentence was not complete when this Court issued its decision in *Ramos*, his

[3] The State of Louisiana argues in brief that Vaughn should have argued at the trial court he was entitled to *Ramos* relief. There is no legal support for this contention. In fact, this court remanded at least two writs of certiorari where there is no indication the defendant filed for *Ramos* relief at the trial court. See *Nagi v. Louisiana*, 140 S.Ct. 2710, 206 L.Ed.2d 848 (2020) (Claim for *Ramos* relief initially made to this court in footnote); *Hayes v. Louisiana*, 141 S.Ct. 1040, 208 L.Ed.2d 513 (2021) (Claim for relief made to this court in petition for Writ of Certiorari).

conviction and sentence were not final and his case remained under "direct review" or "in the pipeline," affording him new trial rights. To hold as the State of Louisiana suggests would eviscerate *Griffith*, and *Caspari v. Bohlen*, 510 U.S. 383, 114 S.Ct. 948, 127 L.Ed.2d 236 (1994), bifurcate the appellate and habeas corpus processes, and eliminate the benefit of any new ruling by this court.

This Court should reverse the Louisiana Supreme Court decision and hold that Kyran Vaughn is entitled to *Ramos* relief.

Respectfully submitted,

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