

Appendix A →→→ Ruling

Court: Louisiana Supreme Court
Docket Number: 2022-KH-00222
Date Decided: February 7, 2023
Disposition: Denied

The Supreme Court of the State of Louisiana

BRANDON TATE

No. 2022-KH-00222

VS.

TIM HOOPER, WARDEN LSP

IN RE: Brandon Tate - Applicant Other; Applying For Supervisory Writ, Parish of Jefferson, 24th Judicial District Court Number(s) 09-1743, Court of Appeal, Fifth Circuit, Number(s) 21-KH-745;

February 07, 2023

Writ application denied.

WJC

JLW

JDH

SJC

JTG

JBM

PDG

Supreme Court of Louisiana

February 07, 2023

Katie Mananouc

Chief Deputy Clerk of Court

For the Court

Appendix C →→→ Ruling

Court: 5th Circuit Court of Appeal (State Level)
Docket Number: 21-KH-745
Date Decided: 01/06/2022
Judges: Chehardy, Gravios, & Chaisson
Disposition: Denied

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
NANCY F. VEGA
CHIEF DEPUTY CLERK
SUSAN S. BUCHHOLZ
FIRST DEPUTY CLERK
MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN
TRANSMITTED IN ACCORDANCE WITH UNIFORM RULES - COURT OF APPEAL, RULE 4-6 THIS
DAY 01/06/2022 TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF
THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY
COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-KH-745

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Lee V. Faulkner, Jr. (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

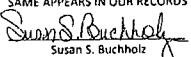
Grant L. Willis (Respondent)

MAILED

Brandon Tate #589945 (Relator)
Louisiana State Penitentiary
Angola, LA 70712

BRANDON TATE
VERSUS
TIM HOOPER, WARDEN LSP

NO. 21-KH-745
FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Susan S. Buchholz
First Deputy Clerk of Court

January 06, 2022

Susan Buchholz
First Deputy Clerk

IN RE BRANDON TATE

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE LEE V. FAULKNER,
JR., DIVISION "P", NUMBER 09-1743

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Robert A. Chaisson

WRIT DENIED

Relator, Brandon Tate, pled guilty to two counts of attempted second-degree murder and accessory after the fact to second-degree murder on October 13, 2011. The trial court sentenced relator to 25 years imprisonment at hard labor on each of the attempted second-degree murder counts, and five years imprisonment at hard labor on the accessory count, with all terms to run concurrently. Relator did not appeal.

On November 2, 2021, relator filed a "Motion to Challenge the Constitutionality of Petitioner's Guilty Plea," arguing that the Supreme Court's ruling in *Ramos v. Louisiana*, 590 U.S. ---, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020), rendered his 2011 guilty plea an "absolute nullity" because he was induced to plead guilty by the threat of an unconstitutional jury trial in which a unanimous verdict would not be required.¹ The trial court denied relief, finding that relator actually was seeking post-conviction relief under La. C.Cr.P. art. 924.² Pursuant to La. C.Cr.P. art. 930.8, the trial court determined that relator's APCR was untimely.³

¹ In *Ramos*, the United States Supreme Court found that the Sixth Amendment right to a jury trial—as incorporated against the States by the Fourteenth Amendment—requires a unanimous verdict to convict a defendant of a serious offense.

² La. C.Cr.P. art. 924 provides that an application for post-conviction relief (APCR) "means a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside."

³ La. C.Cr.P. art. 930.8(A) provides in pertinent part: "No application for post-conviction relief ... shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final."

We find no error in the trial court's determination that relator's challenge to the validity of his guilty plea is time barred. First, relator's convictions and sentences became final in 2011 when he failed to appeal, and he did not seek relief within two years of that date, as required under La. C.Cr.P. art. 930.8(A). *See State v. Williams*, 16-32 (La. App. 5 Cir. 8/24/16), 199 So.3d 1205, 1209. Second, to the extent relator relies on *Ramos* as a "theretofore unknown interpretation of constitutional law" to invalidate his guilty plea pursuant to La. C.Cr.P. art. 930.8(A)(2), relator had one year from the date of that April 2020 decision to seek relief, but he did not file his motion until November 2021, more than one after *Ramos* was issued.

Additionally, *Ramos* does not apply because relator pled guilty in accordance with a negotiated plea agreement, and a guilty plea waives all non-jurisdictional defects in the proceedings prior to the plea. *State v. Crosby*, 338 So.2d 584, 586 (La. 1976); *see also Dunn v. State*, 21-KH-218 (La. App. 5 Cir. 5/20/21) (unpub.), *writ denied*, 21-891 (La. 12/12/21), 325 So.3d 1069 ("Neither *Ramos*—which held that a defendant who is tried for a serious crime has a right to a unanimous jury verdict—nor the recently rendered *Edwards v. Vannoy*, --- S.Ct. --, 2021 WL 1951781, provide that the *Ramos* decision invalidates a guilty plea or is an exception to the time limitation set forth in La. C.Cr.P. art. 930.8(A)").

As relator has failed to enunciate valid grounds for post-conviction relief, the writ is denied.

Gretna, Louisiana, this 6th day of January, 2022.

SMC
JGG
RAC

**Additional material
from this filing is
available in the
Clerk's Office.**