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No. 23-5700

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL GRAY – PETITIONER
vs.
STATE OF LOUISIANA – RESPONDENT(S)

ON PETITION FOR DIRECT COLLATERAL REVIEW TO
THE STATE OF LOUISIANA SUPREME COURT

PETITION FOR DIRECT COLLATERAL REVIEW

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ORIGINAL

QUESTION(S) PRESENTED

1. Does the State of Louisiana have the express right to invoke the defense of “judicial economy” as a ruse for plausible deniability; especially when the State of Louisiana engineered the action which resulted in the Substantial and direct violations of the United States Constitutional guarantees?
2. Does this Court’s holding in Montgomery v. Louisiana, No. 14-280, 136 S.Ct. 718 (01/27/2016) - a reasoned judgment - controls subsequent cases in a similar posture?
3. Is an unconstitutional criminal procedure the same as an unconstitutional statutory provision being an absolute nullity under this Court’s holding in Montgomery v. Louisiana, No. 14-280, 136 S.Ct. 718 (01/27/2016)?
4. Does the Louisiana Supreme Court’s judgment in State v. Reddick, 2021-01893 (La. 10/21/22), ___ So. 3d ____ on February 7, 2023 circumvent the Constitutional protections that are deeply engrained within the Sixth and Fourteenth Amendment to the United States Constitution?
5. When a trial court – as in Petitioner’s case – direct a jury to reach a non-unanimous verdict violate the peremptory safeguards of the Sixth Amendment right to a trial by jury and violate the peremptory safeguards of the Fourteenth Amendment right to the equal protection of the law?

LIST OF PARTIES

RULE 14.1(b) STATEMENT

All parties to this proceeding 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 proceedings in the court whose judgment is the subject of this petition is as follows:

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PETITION FOR DIRECT COLLATERAL REVIEW

Petitioner, Paul Gray, respectfully petitions for a writ of certiorari and direct collateral review to review the opinion and judgment of the Louisiana Supreme Court.

OPINIONS BELOW

The opinion of the Supreme Court for the State of Louisiana rendered May 2, 2023 is published at State of Louisiana v. Paul Gray, No. 2023-KH- 00195.

JURISDICTION

The judgment of the Supreme Court of Louisiana was entered February 7, 2023. The petition is timely under **28 U.S.C. § 2101(d)** and Supreme Court Rules 13.1 and 13.3 because it is being filed within 90 days after denial of a timely sought writ of certiorari to the Supreme Court of Louisiana. This Court has jurisdiction to review the judgment of the Supreme Court of Louisiana pursuant to **28 U.S.C. § 1257(a).**

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

The Sixth Amendment to the United States Constitution is peremptory and provides that all persons have the right to a trial by jury.

The Fourteenth Amendment to the United States Constitution is peremptory and provides in relevant part: “. . .nor shall any State deprive any person of life, liberty, or property, without due process of law . . . and the equal protection of the laws.”

ACTION OF THE COURTS BELOW

Paul Gray's Petition for Habeas Corpus that was filed into the Twenty Fifth Judicial District Court, Parish of Plaquemines, State of Louisiana: Docket No. 85-5278, Div. B on November 30, 2021. The trial court denied Gray's Petition for Writ of Habeas Corpus on November 23, 2022. (See Appendix C thru C-2)

Gray timely filed an Application for Supervisory Writs and Review to the Court of Appeal, Fourth Circuit: Docket No. 2022-K-0651, on December 15, 2022. On January 6, 2023 the Fourth Circuit Court of Appeal for the State of Louisiana denied Gray's application. (See Appendix B)

On January 19, 2023 Gray electronically filed a Petition for Supervisory Writs and Review in to the Supreme Court for the State of Louisiana. On May 2,

2023, in Docket No. 2023-KH-00195, the court denied relief citing State v. Reddick, 2021-01893, 351 So.3d 273.

STATEMENT OF THE CASE

Petitioner Gray was convicted of three counts of aggravated rape and sentenced to three consecutive terms of life imprisonment without benefit of parole, probation, or suspension of sentence. His convictions and sentences were affirmed on appeal. State v. Gray, 533 So.2d 1242 (1988), writ denied 546 So.2d 1209 (La. 1989). (Gray notes here, if this is truly the case, why is he currently serving a term of four consecutive terms of life imprisonment).

REASONS FOR GRANTING THE WRIT

1. The State of Louisiana cannot circumvent the peremptory safeguards of the United States Constitution by invoking the defense of “judicial economy” as a ruse for plausible deniability; especially when the State of Louisiana engineered the action which resulted in the Substantial and direct violations of the United States Constitutional guarantees.
2. This Court’s holding in Montgomery v. Louisiana, No. 14-280, 136 S.Ct. 718 (01/27/2016) - a reasoned judgment - should control subsequent cases in a similar posture as Gray’s.
3. An unconstitutional criminal procedure the same as an unconstitutional statutory provision being an absolute nullity under this Court’s holding in Montgomery v. Louisiana, No. 14-280, 136 S.Ct. 718 (01/27/2016).

4. The Louisiana Supreme Court's judgment in State v. Reddick, 2021-01893 (La. 10/21/22), ___ So. 3d ____ on February 7, 2023 circumvent the Constitutions' peremptory protections that are deeply engrained within the Sixth and Fourteenth Amendment to the United States Constitution.
5. The trial court wrongfully directed the jury to reach a non-unanimous verdict violate the peremptory safeguards of the Sixth Amendment right to a trial by jury and violate the peremptory safeguards of the Fourteenth Amendment right to the equal protection of the law.

ARGUMENT 1.

Petitioner argues that with the advent of Ramos v. Louisiana, No. 18-5924, 590 U.S. _____, rendered April 20, 2020, striking down the procedures wherein a non-unanimous jury verdict was rendered as unconstitutional, along with the procedure for obtaining such through a trial court's jury instruction, a Petition for Writ of Habeas Corpus is the proper format where his convictions are now null and void; and amount to a structural defect in the trial procedure which also nullifies the criminal proceedings in Petitioner's instant case now before this Honorable Court.

In State of Louisiana v. Julio Melendez, No. 2021-K-0597, (La. App. 4th Cir. 11/10/2021), this Court of Appeal determined that Ramos, was retroactive.

It is Petitioner's assertion that this court's ruling is correct and follows the United States Supreme Courts holding in Danforth v. Minnesota, 128 S.Ct. 1029 (2008) where the U.S. Supreme Court noted the states have a broader discretion in applying new rules of criminal procedure retroactively.

A State court's refusal to entertain Petitioner's constitutional claims violates the Supremacy Clause of the Federal Constitution. U.S.C.A.. Const. Art. 6, cl.2. See, e.g. Howlett v. Rose, 110 S.Ct. 2430 (1990).

In light of the United States Supreme Court's decision in Ramos v. Louisiana, No. 18-5924, 590 U.S. _____, rendered April 20, 2020, Petitioner's convictions for four counts of Aggravated Rape, a violation of LSA-R.S. 14:42 obtained under Docket Number 85-5278, Div. B are, being non-unanimous verdicts, unconstitutional. See also: State v. Howard, 15th Judicial District Court No. 163534; State v. Maxie, 11th Judicial District Court No. 13-CR-72522.

ARGUMENT 2.

The reasoning behind the fact that retroactivity is not an issue is because prior to the Louisiana Legislature's 1898 referendum a unanimous verdict was required. In 1898 the Legislature knowingly and willingly lowered the unanimous jury verdict to 9-3 required for a conviction – it was mandatory that a unanimous jury verdict be obtained. In 1974 the Louisiana Legislature raised the requirement for a conviction to 10-2; hence under the federal constitution a non-unanimous jury verdict was still unconstitutional as not requiring a unanimous jury verdict.

Additionally, a state court may not deny federal rights, when parties in controversy are properly before it. See: Arizona v. United States, 567 U.S. 387, 132 S.Ct. 2492 (06/25/2012); State of Louisiana v. Alexis, No. 2013-K-1271, 126

So.3d 453 (LA 10/15/2013); 88 Georgetown L.C. 2085, July 2000 (09/21/2021); all holding that the federal constitutions protections are peremptory and over-ride all state constitutions; codal and statutory provisions which fail and fall short of said protections.

ARGUMENT 3.

Retroactivity should no longer be an issue in this matter. See also: Montgomery v. Louisiana, No. 14-280, 136 S.Ct. 718, judgment rendered January 25, 2016; revised January 27, 2016. In Montgomery, the U.S. Supreme Court noted that a conviction under an unconstitutional law is not merely erroneous, but is illegal and void; and as such the retroactive application of substantive rules of federal constitution does not implicate a State's weighty interests in ensuring the finality of convictions.

ARGUMENT 4.

In Petitioner's case, defense counsel objected to the Court's La.C.Cr.P., Art. 782 jury instruction that informed the jury that a verdict of guilty by at least 10 constituted a conviction as to each count of the indictment. Counsel for Petitioner noted that because, if convicted the result would be a mandatory life sentence the charges were quasi-capitol in nature; hence a unanimous verdict instruction was required. Petitioner argues, the trial court committed Constitutional error when it denied counsel's objection and directed a non-unanimous verdict prior to jury

deliberations, as the trial court's instruction impermissibly lowered the standard of beyond a reasonable doubt. U.S. Const. Amend. 6 and 14; Ramos v. Louisiana, No. 18-5924, 590 U.S. ___, rendered April 20, 2020.

ARGUMENT 5.

Petitioner argues that the trial court's directed non-unanimous verdict in this case is a structural defect in the proceedings. See: Sullivan v. Louisiana, No. 92-5129, 113 S.Ct. 2078 rendered June 1, 1993. This is so because the trial court's direction of a non-unanimous verdict drastically lowered the standard of reasonable doubt. The effect of the structural defect in this case nullifies the criminal proceedings in their entirety.

ARGUMENT 6.

The District Court failed to even address this particular issue. However, the District Court did note that Petitioner was convicted of three counts of aggravated rape in violation of LSA-R.S. 14:42; contrary to the appellate court judgment rendered in State v. Gray, 533 So.2d 1242 (La. App. 4 Cir. 1988), writ denied 546 So.2d 1209 (La 1989).

Petitioner asserts that the State Supreme Court's reasoning in State of Louisiana v. Reginald Reddick, No. 2021-01893 (La. 10-21-22) violates the Supreme Law of both the State and Federal constitutions, in that Court Made Law

must give way when fundamental constitutional guaranties are involved:

Retroactive Law v. Supreme Law.

LSA C.C. ART. 1: "The sources of law are legislation and custom." See: Revision comments – 1987 (a) ". . . legislation is the superior source of law in Louisiana." (b),(c) ". . . legislation is a formal expression of legislative will, has been interpreted to establish the supremacy of legislation and to exclude judicial legislation. . ."

LSA-C.C. ART. 3: "Custom results from practice repeated for a long time and generally accepted as having acquired the force of law. Custom may not abrogate legislation."

West's, Louisiana Statutory Criminal Law and Procedure 2012; Constitution of Louisiana 1974; Legislative Intent – 1997 Resolution; Acts 1997, Senate Concurrent Resolution No. 39 provides: "WHEREAS, the Preamble and Declaration of Rights as set forth in Article 1 of the Constitution of Louisiana, establish certain guarantees and protections for individual rights and liberties;" and par. 3 "WHEREAS, the Supreme Court of Louisiana gives careful consideration to the United States Supreme Court's interpretation of relevant provisions of the federal constitution, it cannot and should not allow those decisions to replace its independent judgment in construing our state's constitution, which affords

Louisiana's citizens greater freedom and protection of individual liberties;" par. 4: "THEREFORE, BE IT RESOLVED that the legislature of Louisiana urge and request the Supreme Court of Louisiana to strictly construe the Constitution of Louisiana with respect to the declaration of individual rights and liberties contained therein." See: Louisiana Constitution Article 1, "Origin and Purpose of Government;" § 2, "Due Process of Law," No person shall be deprived of life, liberty, or property, except by due process of law," § 3 "Right to Individual Dignity," "No person shall be denied the equal protection of the laws . . ." *Cf. Unwired Telecom Corp. v. Parish of Calcasieu*, 903 So.2d. 392 (La. 2005).

In Taylor v. Whitley, 606 So.2d 1292, 1297 (La. 1992) this Court adopted the framework for retroactivity pursuant to the United States Courts: a Court made rule, Teague v. Lane, 489 U.S. 288 (1989), and denied petitioners' a fair trial by jury before the taking of their Life, Liberty, or Property without Due Process of law and Equal Protection of the Laws. This Court along with the U.S. Supreme Court recognized the tension in Danforth v. Minnesota, 522 U.S. 264 (2008), explaining that the federal interests in uniformity does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees . . .; so long as they do not violate the Federal Constitution." (The source of a "New Rule" is the Constitution itself, not any Judicial power to create

new rules of law.) Danforth, *supra*. See: Justice Sotomayor, concurring in Ramos “. . . the right to put the State to its burden, in a jury trial that comports with the Sixth Amendment, before facing criminal punishment. See: Codispoti v. Pennsylvania, 418 U.S. 506, 515-516 (1974) (“The Sixth Amendment represents deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement.”)

The Liberty protected by the Due Process Clause is not a creation of the Bill of Rights. Our Nation has long recognized that the Liberty safeguarded by the Constitution has far deeper roots. See; Declaration of Independence: (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights,” among which are “Life, Liberty, and the pursuit of Happiness.”)

The “most elemental” of the Liberties protected by the Due Process Clause is “the interest in being free from physical detention by one’s own government.” Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004). See: Foucha v. Louisiana, 504 U.S. 71, 80 (1992) “freedom from bodily restraint has always been at the core of the Liberty protected by the Due Process Clause.”

In Hicks v. Oklahoma, 447 U.S. 343 (1980), the Supreme Court held, “. . . that where a state has provided for the imposition of criminal punishment in the

discretion of the trial jury or judge, it is not correct to say that the defendants interest in the exercise of that discretion is merely a matter of State procedural law. The defendant in such a case has a substantial and legitimate expectation that he will be deprived of his Liberty only to the extent determined by the jury or the judge. The exercise of its statutory discretion and that Liberty interest is one the Fourteenth Amendment preserves against arbitrary deprivation by the State.” (Potentially violating the provisions of the Eighth Amendment).

Finally, as Justice Sotomayor explains, “the majority vividly describes the legacy of racism that generated Louisiana’s and Oregon’s laws.” “. . . See generally United States v. Fordice, 505 U.S. 717, 29 (1992) (policies that are “traceable” to a State’s de jure racial segregation and that still have discriminatory effects, offend the Equal Protection Clause.” “. . . Louisiana’s perhaps only effort to contend with the law’s discriminatory purpose and effects came recently, when the law was repealed altogether.” But See: Louisiana Associated General Contractors, Inc. v. State Div. Admin. Office of State, 669 So.2d 1185 (La. 1996) at [6], “An exception to the general rule that voluntary cessation of allegedly illegal conduct does not make a case moot where it can be said with assurance there is no reasonable expectation the alleged violation will recur, and interim relief or events have completely and irrevocably eradicated effects of the alleged violation.”

CONCLUSION

In light of the Oregon Supreme Court's holding and judgment in Jacob Keith Watkins v. Richard Ackley, ___ P.3d ____, 370 OR. 604 decided 12/30/2022, Petitioner Gray asserts, that the Louisiana's State Supreme Court should not remain the only court, and therefore the state in these United States to trample upon the constitutional rights of its citizens.

Gray asserts the Honorable Justices of this Court should grant direct collateral review and reinstate to all citizens of the State of Louisiana the Constitutional rights invested within the Sixth Amendment to the United States Constitution which are applicable to the State of Louisiana through the Fourteenth Amendments right to due process of law and to the equal protection of the law; which are in force and employed by all of the other forty-nine (49) states.

Respectfully submitted by:



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