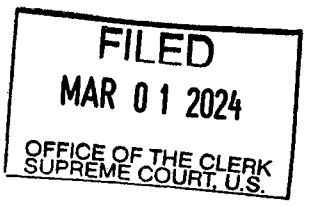
No.: 23-6925

ORIGINAL



In The
Supreme Court of the United States
_____ Term, _____

SADAT EL-AMIN v. KEITH COOLEY, Warden

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

Sadat El-Amin, #292961
Allen Correctional Center
3751 Lauderdale Woodyard Rd.
Kinder, LA 70648

02-29-24
Date

QUESTION PRESENTED

1. **As there are conflicting decisions amongst state courts of last resort concerning a constitutional issue, in accordance with Rule X(b), this matter is now ripe for review from this Honorable Court.**

RELATED PROCEEDINGS

Although Mr. El-Amin has already requested that this Court grant retroactivity previous Application, there have been a recent development in the Oregon Supreme Court which contradicts the Louisiana Supreme Court's decision in ***State v. Reddick***, 2021-KP-01893, p. 7 (La. 10/21/22), which denied the retroactive application of ***Ramos***, the Oregon Supreme Court, in ***Watkins v. Ackley***, 370 Or. 604 (12/30/22), granted the retroactive application of ***Ramos***.

Accordingly, Rule X(b) of the United States Supreme Court Writ Grant Consideration now allows this Court to review such as there are now conflicting decision amongst state courts of last resort.

On August 10, 2020, Mr. El-Amin filed his collateral review in the First Judicial District Court concerning his verdict being unconstitutionally obtained with a non-unanimous jury verdict. On September 30, 2020, the district court denied him relief. On October 22, 2020, Mr. El-Amin filed for Supervisory Writs to the Louisiana Second Circuit Court of Appeal, which was denied by the Court of Appeal on December 9, 2020.

Mr. El-Amin then sought Writ of Review to the Louisiana Supreme Court on December 23, 2020 which was denied on March 23, 2021.

TABLE OF CONTENTS:

Page

QUESTION PRESENTED
LIST OF PARTIES
INDEX OF AUTHORITIES....ii
OPINIONS....1
JURISDICTION....2
Petition for Writ of Certiorari....1
NOTICE OF PRO-SE FILING....1
OPINIONS....1
JURISDICTION....1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED....1
INTRODUCTION....2
STATEMENT OF THE CASE AND FACTS....4
REASONS FOR GRANTING THE WRIT....5
ARGUMENT....5
Non-unanimous jury verdicts convicted Mr. El-Amin of two Counts of Forcible Rape with non-unanimous jury verdicts, in violation of his Sixth and Fourteenth Amendments rights....5
CONCLUSION....17
CERTIFICATE OF SERVICE....17

APPENDIX:

"A" Original Application for Post-Conviction Relief Memorandum in Support;
"B" Ruling: 22nd Judicial District Court;
"C" Supervisory Writ: Louisiana First Circuit Court of Appeal;
"D" Ruling: Louisiana First Circuit Court of Appeal;
"E" Supervisory Writ: Louisiana Supreme Court;
"F" Ruling: Louisiana Supreme Court.

EXHIBIT:

"A" Jury Polling transcript.

INDEX OF AUTHORITIES: Page

U.S. CONSTITUTION:

Fourteenth Amendment to the United States Constitution.....passim
Fourteenth, Fifth and Sixth Amendments to the United States Constitution.....1
Sixth Amendment to the United States Constitution.....passim
Sixth and Fourteenth Amendments to the United States Constitution.....2, 3, 15

FEDERAL CASES:

Apodaca v. Oregon, 406 U.S. 464 (1972).....3, 4
Brown v. Louisiana, 447 U.S. 323 (1980).....9
Burch v. Louisiana, 441 U.S. 130 (1979).....9
Danforth v. Minnesota, 552 U.S. 264, 278-79 (2008).....9
Duncan v. Louisiana, 391 U.S. 145, 148-50 (1968).....11
Edwards v. Louisiana, 141 S.Ct. 1547 (2021).....7, 8, 9, 10, 13
Griffith v. Kentucky, 479 U.S. 314 (1987).....8
Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).....1
Johnson v. Louisiana, 406 U.S. 356 (1972).....10
Johnson v. New Jersey, 384 U.S. 719 (1966).....9
Lawrence v. Florida, 549 U.S. 327, 127 S.Ct. 1079 (2007).....1
Linkletter v. Walker, 381 U.S. 618 (1965).....7, 8
Montgomery v. Louisiana, 577 U.S. 190, 200-05 (2016).....9
Ramos v. Louisiana, 140 S.Ct. 1390 (2020).....passim
Strauder v. United States, 100 U.S. 303 (1879).....12
Taylor v. Louisiana, 419 U.S. 522 (1975).....12
Teague v. Lane, 489 U.S. 288 (1989).....8, 9

STATUTORY PROVISIONS:

La.C.Cr.P. Art. 930.3.....2
La.C.Cr.P. Art. 930.8 A(1).....6
La.C.Cr.P. Arts. 930.8.....6
La.C.Cr.P. Arts. 930.8. and 930.4.....6
Rule X (b) of the United States Supreme Court.....5, 6

STATE CASES:

State v. Reddick, 2021-KP-01893 (La. 10/21/22).....3, 5, 12, 14
Watkins v. Ackley, 370 Or. 604 (12/30/22).....3, 4, 5, 17

MISCELLANEOUS:

2018 Legislative Session.....15
Constitutional Conventional in 1898.....12
Emancipation Proclamation.....14
William Blackstone, 4 Commentaries of the Laws of England 343.....9

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "D" to the petition and is the Louisiana Supreme Court in Docket Number _____.

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the First Circuit Court of Appeal appears at Appendix "C" to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was _____ _____. A copy of that decision appears at Appendix "E".

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

In The
Supreme Court Of The United States
_____ Term, 2024

No.:_____

SADAT EL-AMIN v. KEITH COOLEY, Warden

Petition for Writ of Certiorari to the Louisiana Supreme Court

Pro Se Petitioner, Sadat El-Amin respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Louisiana First Circuit of Appeal, entered in the above entitled proceeding on June 20, 2023, and the Louisiana Supreme Court, entered in the above entitled proceeding on _____.

NOTICE OF PRO-SE FILING

Mr. El-Amin requests that this Honorable Court view these claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Mr. El-Amin is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

JURISDICTION

The Louisiana Supreme Court denied discretionary review of Mr. El-Amin's Supervisory Wirt on _____. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth, Fifth and Sixth Amendments to the United States Constitution and ***Lawrence v. Florida***, 549 U.S. 327, 127 S.Ct. 1079 (2007)(post-AEDPA).

The Sixth Amendment to the United States Constitution provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." U.S. Const. Amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without Due Process." U.S. Const. Amend XIV, § 1.

La.C.Cr.P. Art. 930.3 provides in pertinent part: "If the Petitioner is in custody after sentence for conviction of an offense, relief shall be granted only on the following grounds: (1) The conviction was obtained in violation Constitution of the United States or the State of Louisiana."

INTRODUCTION

When Mr. El-Amin is an African-American man who was tried for a two Counts of Forcible Rape. Had Mr. El-Amin been tried in federal court or any of 48 states, that non-unanimous verdict would not have sufficed to convict him. But Louisiana allowed non-unanimous jury verdicts at the time, making the dissenting jurors' votes meaningless. Mr. El-Amin was convicted and sentenced to 65 years (a ***virtual life sentence***) in prison without the benefit of Probation, Parole, or Suspension of Sentence.

This Court recently held in ***Ramos v. Louisiana***, 140 S.Ct. 1390 (2020), that the Sixth and Fourteenth Amendments prohibit criminal convictions by non-unanimous jury verdicts. But the Court left open the question whether ***Ramos*** applies retroactively to cases on collateral review. Shortly, thereafter, the Court granted Certiorari in ***Edwards v. Vannoy***, No.: 19-5807, to decide whether ***Ramos*** applies to cases on *federal* collateral review.

The *Ramos* Court reversed Mr. Ramos' conviction and held that Louisiana's scheme of non-unanimous jury verdicts violated the Sixth and Fourteenth Amendments of the United States Constitution.

In doing so, Justice Gorsuch, writing for the five-Justice majority, first articulated what the Court had "repeatedly" recognized over many years; the Sixth Amendment requires a unanimous jury verdict. *Id.*, at ___(slip op., at 6).[1] Then the Court addressed the application of this rule to the states, finding that "[t]here can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal trials equally," as it is incorporated against the states under the Fourteenth Amendment. *Id.*, at ___ (slip op., at 7).

This understanding of incorporation had also been "long explained" by the Court and was supported by jurisprudence for over a half century. *Id.*[2]

Finally, the Court addressed *Apodaca v. Oregon*, 406 U.S. 464 (1972). In *Apodaca*, a majority of Justice recognized that the Sixth Amendment requires unanimity in jury verdicts. However, the Court nonetheless upheld Oregon's system of non-unanimous jury verdicts in "a badly fractured set of opinions." *Ramos*, (slip op., at 8).

Four Justices in the *Ramos* Court found that *Apodaca* had little-to-no precedential value to the case before them.[3] Two Justices found that *Apodaca* was simply "irreconcilable" with the Court's

---

[1] See also *id.*, at ___ (slip op., at 4)("Wherever we might look to determine what the term 'trial by an impartial jury trial' meant at the time of the Sixth Amendment's adoption – whether it's common law, state practices in the founding era, or opinions and treatsies written soon afterward – the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.").

[2] See also, *id.*, at ___ (Kavanaugh, J., concurring in part)(slip op., at 10-11)("the original meaning and this Court's precedents establish that the Fourteenth Amendment incorporates the Sixth Amendment jury trial right against the States"); *id.*, at ___ (Thomas, J., concurring on the judgment)(slip op., at 4-5)("There is also considerable evidence that this understanding [of the Sixth Amendment's unanimity requirement] persisted up to the time of the Fourteenth Amendment's ratification.").

[3] Joined by Justices Ginsberg and Breyer, Justice Gorsuch explained that "***Apodaca*** yielded no controlling opinion at all," *id.*, at ___ (plurality opinion)(slip op., at 18), and "not even Louisiana tries to suggest that ***Apodaca*** supplies a governing precedent." *id.*, at ___ (plurality opinion)(slip op., at 16). In his separate concurring opinion, Justice Thomas found ***Apodaca*** to be inapplicable in this case because it was decided on due process grounds, and in his opinion, the Sixth Amendment is incorporated against the states through the Privileges and Immunity Clause of the Fourteenth Amendment:

constitutional precedent, or "egregiously wrong," and must be overturned.[4] The Court concluded: "We have an admittedly mistaken decision, on a constitutional issue, an outlier on the day it was decided, one that's become lonelier with time." *Id.*, at ___ (plurality opinion)(slip op., at 26). The Court could not, and would not, rely on ***Apodaca*** to uphold Louisiana and Oregon's system of non-unanimous jury verdicts.

Although the Louisiana Supreme Court denied retroactive application of ***Ramos*** to the State of Louisiana, Oregon Supreme Court granted retroactive application of ***Ramos*** in ***Watkins v. Ackley***, 370 Or. 604 (12/30/22). As such this Honorable Court is now able to make a final determination of the retroactive application of ***Ramos*** in accordance to Rule X(b)(a state court of last resort has decided an important federal question in a way that conflicts with the decision of anther state court of last resort or of a United States Court of Appeal). As such, this issue is now ripe for this Court's review.

STATEMENT OF THE CASE AND FACTS

The only relevant portions of the Statement of the Case in this pleading is the fact that Mr. El-Amin has previously filed an Application for Post-Conviction Relief w/ Memorandum in Support, properly arguing that the United States Supreme Court's Ruling in ***Ramos v. Louisiana***, 590 U.S. ___ (2020), must be held retroactively to his case according to the language which was used in the Supreme Court's holding in ***Ramos***. The majority of the Justices in ***Ramos*** agreed that the Sixth and Fourteenth Amendments to the United States Constitution ***have always*** guaranteed a defendant the right to a unanimous jury verdict, whether it be state or federal court. The Court also enunciated that a verdict of

---

Because "***Apodaca*** addressed the Due Process Clause, its Fourteenth Amendment ruling does not bind us because the proper question here is the scope of the Privileges or Immunities Clause." ***Id.***, at ___ (Thomas, J., concurring in the judgment)(slip op., at 8).

[4] In her concurrence, Justice Sotomayor wrote: ***Apodaca*** is "irreconcilable with not just one, but two, strands of constitutional precedent well established both before and after the decision. The Court has long recognized that the Sixth Amendment requires unanimity." ***Id.***, at ___ (Sotomayer, J., concurring in part)(slip op., at 2). In his concurring opinion, Justice Kavanaugh concluded that ***Apodaca*** must be reversed, as it is "***Apodaca*** is egregiously wrong. The original meaning and this Court's precedents establish that the Sixth Amendment requires a unanimous jury ... And the original meaning and this Court's precedents establish that the Fourteenth Amendment incorporates the Sixth Amendment jury trial right against the States." ***Id.***, at ___ (Kavanaugh, J., concurring in part)(slip op., at 11).

11-1 was "no verdict at all."

However, Mr. El-Amin was convicted of two Counts of Forcible Rape, in violation of LSA-R.S. 1442.1 by a non-unanimous jury verdict (11-1).

Mr. El-Amin was convicted by a non-unanimous jury verdict. One juror harbored enough doubt about Mr. El-Amin's guilt to enter a vote of "not guilty." On the basis of these non-unanimous jury verdicts, Mr. El-Amin was sentenced to a virtual life sentence (65 years) without the benefit of Probation, Parole, or Suspension of Sentence.

REASONS FOR GRANTING THE WRIT

In accordance with this Court's *Rule X, § (b)*, Mr. El-Amin presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court of last resort has decided an important federal question in a way that conflicts with the decision of anther state court of last resort or of a United States Court of Appeal. See" *State v. Reddick*, 2021-KP-01893, p. 7 (La. 10/21/22), where the Louisiana Supreme Court denied the retroactive application of *Ramos*, and; *Watkins v. Ackley*, 370 Or. 604 (12/30/22) where the Oregon Supreme Court granted the retroactive application of *Ramos*.

ARGUMENT

Non-unanimous jury verdicts convicted Mr. El-Amin of two Counts of Forcible Rape with non-unanimous jury verdicts, in violation of his Sixth and Fourteenth Amendment rights.

Mr. El-Amin was convicted of two Counts of Forcible Rape by a non-unanimous jury. Mr. El-Amin filed his Original Application for Post-Conviction Relief, which was denied through all of the State Courts. Mr. El-Amin now brings this timely PCR pursuant to La.C.Cr.P. Art. 930.8 A(1). At the conclusion of trial Mr. El-Amin was convicted of such by a non-unanimous jury verdict (10-2 and 11-1). Mr. El-Amin's conviction is unconstitutional as the Sixth and Fourteenth Amendments to the United States Constitution guarantees all defendants a unanimous jury verdict.

At this time, Mr. El-Amin is unable to properly argue against the district court's ruling due to the fact that the district court failed to conduct an evidentiary hearing in this matter; the court simply erroneously applied the procedural bars of La.C.Cr.P. Arts. 930.8. and 930.4.

According to Rule X (b) of the United States Supreme Court, "a state court of last resort has decided an important federal question in a way that conflicts with the decision of anther state court of last resort or of a United States Court of Appeal," this matter is now ripe for review due to the conflicting decisions between two state Supreme Courts.

In *Ramos*, the United States Supreme Court held that the Sixth Amendment to the United States Constitution requires that a jury reach a unanimous guilty verdict to convict a defendant of a crime. Since that decision, the courts have permitted criminal defendants by non-unanimous jury verdicts have been dealing with its implications. The courts have only been granting relief in case that were currently on Direct Appeal and review – that is cases that were still pending on Appeal when *Ramos* was decided, meaning that any violation of the rule announced in *Ramos* could be raised before the judgment of conviction became final.

Mr. El-Amin raised this issue as soon as ***Ramos*** was decided, but years after the challenged convictions had become final. The issue in this case concerns the so-called "retroactivity" of the constitutional rule announced in ***Ramos*** on collateral review.

The courts have previously erroneously denied Mr. El-Amin relief in this matter because convicting a defendant on a non-unanimous jury verdict amounts to a "substantial denial in the proceedings resulting in a Petitioner's conviction, of a Petitioner's rights under the United States Constitution, which renders the conviction void," for which collateral review shall be granted.

At this time, Mr. El-Amin challenges that he should be granted Post-Conviction Relief at this time because his convictions were based on non-unanimous jury verdicts, they were obtained in violation of the Sixth Amendment, which is applicable to his rights under the Fourteenth Amendment, as decided in ***Ramos***.

On the question whether a convicted person can obtain retroactive relief in Post-Conviction for the state's violation of a federal constitutional rule that was not judicially recognized until after a person was convicted, Louisiana is not clear. Accordingly, several jurisdictions are allowing retroactive application of ***Ramos*** even after the United States Supreme Court denied retroactivity in the ***Edwards*** decision. For instance, Orleans Parish has been granting relief to others similarly situated during collateral review. Also, Caddo Parish has been considering retroactive application of the ***Ramos*** to persons on collateral review. However, in the case of Caddo Parish, the District Attorney's Office has only been reviewing multiple offender cases.

Much of the confusion stems from uncertainty about whether and how the federal "retroactivity" doctrine is binding in state court proceedings. The growing possibility of using federal habeas to obtain retroactive application based on newly announced constitutional rules inevitably clashed with traditional concerns about the finality of judgments in criminal proceedings. The Court sought to

resolve that conflict in *Linkletter v. Walker*, 381 U.S. 618 (1965), holding that courts had discretion to determine whether a newly announced constitutional rule could be used to obtain retroactive relief, based on their own weighing of three factors: the new rule's purpose; the effect of its retroactive application on the administration of justice; and the reliance of law enforcement authorities on any prior standard.

Some years later, recognizing that application of that discretionary analysis led to inconsistent results, the Court announced a more systematic set of rules in *Griffith v. Kentucky*, 479 U.S. 314 (1987), and *Teague v. Lane*, 489 U.S. 288 (1989). Under *Griffith*, a newly announced constitutional rule would apply in all cases still pending on direct appeal when the rule was announced. Under *Teague*, newly announced constitutional rules would not apply retroactively in collateral proceedings, with two exceptions. First, new "substantive" rules, *i.e.*, rules that "place certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe," would always provide a basis for relief on collateral review. Second, "watershed rules of criminal procedure" that "alter our understanding of the bedrock procedural elements essential to a fair trial" would similarly provide a basis for retroactive relief.

Recently, the Court abandoned the "watershed rules of criminal procedure" exception as "moribund," explaining that because it had never found a new criminal procedure rule that fit within that exception in the 30-odd years since the exception was announced, it could not "responsibly continue to suggest" that a new rule could satisfy the exception. *Edwards v. Louisiana*, 141 S.Ct. 1547 (2021). This, as things now stand in federal habeas proceedings, new constitutional rules of criminal procedure *never* provides a basis for retroactive relief, while new constitutional rules that are substantive *always* provide a basis for retroactive relief.

But what about state collateral proceedings? While *Linkletter* and *Teague* both set out rules for

determining which federal constitutional violations could be remedied retroactively in *federal* appeal habeas proceedings, neither case addressed whether *states* must, or could provide retroactive remedies for the same constitutional violations in their own Post-Conviction proceedings.

In fact, even as the Supreme Court was first developing its retroactivity doctrine, it expressly disavowed any intention to impose the retroactivity rules that it had designated for federal appeals and habeas proceedings in the states. See: ***Johnson v. New Jersey***, 384 U.S. 719 (1966)("Of course, States are still entirely free to effectuate under their own law stricter standards than those we have laid down and to apply those standards in a broader range of cases than is required by this decision"). After ***Teague***, the Court clarified and refined its thinking on that issue. In ***Danforth v. Minnesota***, 552 U.S. 264, 278-79 (2008), the Court explained that ***Teague***'s general rule of retroactivity had been derived from the federal habeas statute and therefore limited only the scope of *federal* habeas relief, leaving states free to apply new constitutional rules retroactively in state Post-Conviction proceedings. On the other hand, the Court explained in ***Montgomery v. Louisiana***, 577 U.S. 190, 200-05 (2016), that the exception announced in ***Teague*** for new "substantive" rules to the general rule of nonretroactivity rested on constitutional grounds, meaning that states *must* apply such new rules retroactively in their own collateral proceedings.

The jury unanimity requirement is indisputably such an element. Justice Kagan's dissent in ***Edwards*** aptly explains its centrality to our understanding of a fair and reliable jury verdict. She quotes Blackstone for the proposition that a person can be punished for a crime "only with 'the truth of the accusation' is 'confirmed by the unanimous suffrage' of a jury 'of his equals and neighbors.'" 145 S.Ct. at 576 (Kagan, J., dissenting)(quoting **William Blackstone**, 4 *Commentaries of the Laws of England* 343). As she points to the Court's decision in ***Brown v. Louisiana***, 447 U.S. 323 (1980), regarding the retroactivity of the rule announced in ***Burch v. Louisiana***, 441 U.S. 130 (1979): that when a person is

tried by a six-person jury, the guilty verdict must be unanimous. In ***Brown***, Justice Kagan observes, the Court concluded that the unanimity rule in the six-person jury context is "essential" and must be applied retroactively because a non-unanimous jury 'raises serious doubts about the fairness of the trial'" and "fails to 'assure the reliability of a guilty verdict.'" ***Edwards***, 141 S.Ct. 1623 (quoting ***Brown***, 477 U.S. at 331). In other words, the requirement of a unanimous guilty verdict has long been viewed as an essential part of a *fair* jury trial.

The logic of that view is evident. There is less risk of an erroneous conviction by a 12-person that unanimously finds that a defendant is guilty beyond a reasonable doubt than there is by a 12-person jury which cannot unanimously make that finding. But there is another, perhaps less immediately but nevertheless historically important, way that the unanimity requirements safeguards fundamental fairness: It helps ensure that a jury's decision is based on the evidence and not on racial or other similar biases. Louisiana, like most other United States jurisdictions, has states that are directed at creating a jury pool that is representative of the community, and at prohibiting exclusion of jurors on basis of "race, religion, sex, sexual orientation, gender identity, national origin, age, income, occupation, or any other factor that discriminates against a cognizable group in this state."

In theory, those requirements lessen the likelihood of jury decisions based on bias against a "cognizable group" of which the defendant is a member. But, if a jury, however, representative of the community it might be, is not required to reach unanimity, the majority can simply ignore the views of the minority who do not share its biases and thus force a decision that ultimately is based on prejudice.. in that way, as Justice Steward explained in his dissent in ***Johnson v. Louisiana***, 406 U.S. 356 (1972), a requirement that a jury reach a unanimous guilty verdict ensures that juries operate fairly and that their decisions are based on the evidence rather than biases – and thus are more likely to be accurate.

And, with respect to our own state, that particular concern about the fairness of permitting non-

unanimous jury verdicts is not merely theoretical. As the Supreme Court recognized in ***Ramos***, Louisiana's adoption in 1898, of the constitutional amendment that ever since has permitted conviction of most crimes by a non-unanimous jury verdict, "can be traced to the rise of the Ku Klux Klan and efforts to dilute the influence of racial and ethnic and religious minorities on Louisiana juries." In other words, Louisiana discarded the common-law unanimous guilty verdict requirement – a requirement that Louisiana courts had recognized and applied in criminal trials from the time Louisiana's Constitution went into effect until the adoption of the 1898 Constitutional Convention – precisely ***because*** it can prevent racial, religious, and other such majorities from overriding the views of the minorities in determining guilt or innocence, a result that is offensive to our sense of what is fundamentally fair.

The Supreme Court, in ***Ramos***, expressly recognized the discriminatory purpose of the effect of Louisiana's and Oregon's non-unanimous jury verdicts.

In striking down Louisiana's and Oregon's non-unanimous verdict laws, the ***Ramos*** court announced that a jury ***must reach a unanimous verdict to convict***, and that the "Sixth Amendment right to a jury trial is 'fundamental to the American scheme of justice,' and incorporated against the States under the Fourteenth Amendment." ***Ramos***, 140 S.Ct., at 1397 (citing ***Duncan v. Louisiana***, 391 U.S. 145, 148-50 (1968)). While the discriminatory purpose and effect of the non-unanimous verdict was not central to the Supreme Court's legal analysis, the Court considered that discriminatory purposes and effect in reaching its decision. As pertinent here, the Court asked an uncomfortable question: "Why do Louisiana and Oregon allow non-unanimous convictions?" ***Ramos***, 140 S.Ct., at 1394. The Court then candidly answered that question:

"Though it's hard to say why these laws persist, their origins are clear. Louisiana first endorsed non-unanimous jury verdicts for serious crimes at a constitutional convention in 1898. According to one committee chairman, the avowed purpose of that convention was to 'establish the supremacy of the white race,' and the resulting document included many of the trappings of the Jim Crow era: a poll tax,

a combined literacy and property ownership test, and a grandfather clause that I practice exempted white residents from the most onerous of these requirements. ***"

Concurring opinions in ***Ramos*** also acknowledged that those pernicious laws have successfully accomplished that discriminatory purpose. Justice Kavanaugh emphasized that those laws have "allow[ed] convictions of some who would not be convicted under the proper constitutional rule, and [have] tolerate[d] a practice that is thoroughly racist in its origins and [have] continuing racially discriminatory effects[.]. Similarly, Justice Sotomayor expressed her view that "the racially biased origins of the Louisiana an Oregon laws uniquely matter here," 140 S.Ct., at 1408 (Sotomayor, J., concurring in part). This is so, in part, because Louisiana and Oregon have not "truly grappled with the law's sordid history in reenacting them."

Before the late 1800's, Louisiana required a unanimous jury verdict for a felony conviction. See; ***State v. Reddick***, 2021-KP-01893, p. 7 (La. 10/21/22). That changed, however, after the ratification of the Fourteenth Amendment and passage of the Civil Rights Act of 1875, which prompted the United States Supreme Court to prohibit states from barring Black jurors from jury service entirely. ***Strauder v. United States***, 100 U.S. 303 (1879), abrogated by ***Taylor v. Louisiana***, 419 U.S. 522 (1975): See: ***State v. Reddick***, supra.

Following ***Strauder***, Louisiana convened a Constitutional Conventional in 1898. See: ***Ramos***, 140 S.Ct., at 1394. The purpose of that convention was to "establish the supremacy of the white race," according to the delegates. Louisiana sought to avoid an investigation by the United States Senate into whether Louisiana was systematically excluding Black jurors from juries, and its solution was to undermine Black juror participation on juries in another way: by permitting the use of non-unanimous verdicts for serious crimes.

Louisiana and Oregon were finally forced to face the "sordid history" of their respective laws in 2020. After the United States Supreme Court decided ***Ramos***, the practice of using non-unanimous jury

verdicts was ended in both states ("There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally").

The Supreme Court later determined that its decision would not apply retroactively and instead left the states the determination of whether to apply ***Ramos*** retroactively. ***Edwards***, supra, at 141 S.Ct. 1547, 1559 n. 6 (2021). ("States remain free, if they chose, to retroactively apply the jury-unanimity rules as a matter of law in state Post-Conviction proceedings"). In dissent, Justice Kagan, joined by Justices Breyer and Sotomayor, reminded the majority of the extent to which ***Ramos*** acknowledged the racists origins of the non-unanimous verdict laws and the danger that the racial prejudice had resulted in wrongful convictions. Justice Kagan noted that those majority and concurring opinions "relied on strong claim about racial injustice." The ***Ramos*** majority had explained that the Mr. Vince verdict rules were meant "to dilute the influence [on juries] of racial, ethnic, and religious minorities," and "to ensure that African-American juror service would be meaningless." ***Edwards***, 141 S.Ct., at 1577 (Kagan J. dissenting)(quoting ***Ramos***, 140 S.Ct., at 1394). Justice Kagan noted further that Justice Kavanaugh's concurring opinion in ***Ramos*** linked that history to current practice: "'In light of the[ir] racist origins, *** it is no surprise that non-unanimous verdicts can make a difference' – that '[t]hen and now,' they can *** 'negate the votes of black jurors, especially in cases with black defendants.'" ***Edwards***, 141 S.Ct., at 1577 (Kagan, J., dissenting). But, Justice Kagan stated, that assertion precluded the majority's result in ***Edwards***:

"If the old rule functioned as an engine of discrimination against black defendants, *** it's replacement must implicat[e] *** the fundamental fairness and accuracy of the criminal proceeding. [T]he unanimity rule helps prevent racial prejudice from resulting in wrongful convictions. The rule should therefore apply not just forward but back, to all convictions rendered absent it's protection."

The dissenters in ***Edwards*** concluded that a decision like ***Ramos*** "comes with a promise, or at any rate should. If the right to a unanimous jury is so fundamental – if a verdict rendered by a divided jury is "no verdict at all," - then Mr. El-Amin should not spend his life behind bars over one or two jurors'

opposition. Despite the dissent's sound reasoning, the majority decided to leave the question of retroactivity to the states.

Louisiana's reaction post-*Ramos* recently came to a head when the Louisiana Supreme Court decided not to apply the *Ramos* jury unanimity rule retroactively. *Reddick*, supra. Although the Court went through its state's ignoble history surrounding its now outdated non-unanimous verdict rule, it nevertheless determined that that history was not enough for it to apply *Ramos* retroactively, instead opting to leave that decision in the hands of the state Legislature.

It's sad that Louisiana is the *only* state in this great nation that still allows convictions obtained with a non-unanimous jury verdict to stand. This Court must consider the fact that when President Lincoln signed the Emancipation Proclamation, *all* Slaves were set free, regardless of when they had been forced into servitude. However, the State of Louisiana found a solution to overcome the abolition of Slavery, and to ensure that the Anglo Saxon race retained its superiority.

Mr. El-Amin would like this Honorable Court to note that the State of Louisiana does not meaningfully challenge the case for incorporating the requirement of unanimous jury verdicts through the use of the Fourteenth Amendment's Due Process Clause as a general matter. Instead the State of Louisiana argues "Judicial Economy" as its reason for the Courts to deny him relief in this matter.

Also, it must also be noted that in *State v. Reddick*, 2021-KP-01893 (La. 10/21/22), the Louisiana Supreme Court erroneously determined that the voters of the State had determined that the new law concerning non-unanimous jury verdicts should only be applied prospectively. In fact, the voters were given no choice in the matter, as the ballot only stated that the change in the law was to conform to the majority of the states, and that it would affect persons who were arrested on, or after, January 1, 2019.

Louisiana has utilized the non-unanimous jury verdict for too long. The United States Supreme Court declared the use of such as unconstitutional in *Ramos*, but erroneously denied the retroactivity of

such. One must note that if the non-unanimous jury verdict is unconstitutional today, it was unconstitutional in its inception.

Most amazingly, during the course of the 2018 Legislative Session concerning the possibility of changing the Louisiana Constitution's amendment concerning non-unanimous jury verdicts, the prosecutors informed the Legislators during the Hearing that they were going to address the "White Elephant in the room." The prosecutors admitted that the non-unanimous jury verdict laws were based on racially discrimination, but, "It is what it is," ... "but it works." It would appear that any hope the State would have had to prevent the Bill's passage was "shot out of the water" with these remarks during the course of the hearing.[5]

Naturally, some of the Legislators had taken offense to to the District Attorneys' (John F. DeRosier [Calcasieu Parish], and Don M. Burkett [Sabine Parish]) statements which infuriated the Panel to the point where they unanimously agree to send the amended Bill to the House of Representatives for a full vote. Although the Bill was amended to reflect **Prospective Application** only to those arrested after January 1, 2019, the Legislators agreed that most likely the Federal Courts would most likely rule that the new law had to be applied retroactively. This Bill was passed with a ***vast majority*** of the Legislators.

The ***Ramos*** Court reversed Mr. Ramos' conviction and held that Louisiana's scheme of non-unanimous jury verdicts violated the Sixth and Fourteenth Amendments of the United States Constitution.

In doing so, Justice Gorsuch, writing for the five-Justice majority, first articulated what the Court had "repeatedly" recognized over many years: the Sixth Amendment requires a unanimous jury verdict.

[5]Mr. El-Amin is unable to obtain a copy of the CD of the Committee Hearing in order to provide a copy to the Courts due to the restrictions of this institution.

Id., at ___(slip op., at 6).[6] Then the Court addressed the application of this rule to the states, finding that "[t]here can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal trials equally," as it is incorporated against the states under the Fourteenth Amendment. *Id.*, at ___ (slip op., at 7).

This understanding of incorporation had also been "long explained" by the Court and was supported by jurisprudence for over a half century. *Id.*[7]

Accordingly, the district court erred in accepting the non-unanimous verdicts in this case due to the fact that Louisiana's non-unanimous jury system is unconstitutional because it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article One, Section Three (3) of the Louisiana Constitution of 1974.

Here, in addition to the lone line of above cited cases supporting unanimous juries under the Sixth Amendment, every other provision of the Bill of Rights has been found incorporated to the states by the Fourteenth Amendment in a manner that shows "no daylight." See; ***Timbs***, 139 S.Ct., at 687 n. 1, ***Ramos***, 590 U.S. at ___ (slip op., at 13).

The ***Ramos*** decision only reiterated what the Court had long found: that the constitutional right to a unanimous jury verdict applied equally in state and federal courts"

The ***Ramos*** decision only reiterated what the Court had long found: that the constitutional right to a unanimous jury verdict applied equally in state and federal courts"

---

[6]See also *id.*, at ___ (slip op., at 4)("Wherever we might look to determine what the term 'trial by an impartial jury trial' meant at the time of the Sixth Amendment's adoption – whether it's common law, state practices in the founding era, or opinions and treatsies written soon afterward – the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.").

[7]See also, *id.*, at ___ (Kavanaugh, J., concurring in part)(slip op., at 10-11)("the original meaning and this Court's precedents establish that the Fourteenth Amendment incorporates the Sixth Amendment jury trial right against the States"); *id.*, at ___ (Thomas, J., concurring on the judgment)(slip op., at 4-5) ("There is also considerable evidence that this understanding [of the Sixth Amendment's unanimity requirement] persisted up to the time of the Fourteenth Amendment's ratification.").

This Court has repeatedly and over many years, recognized that the Sixth Amendment requires unanimity ... There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury trial is "fundamental to the American scheme of justice" and incorporated against the States under the Fourteenth Amendment. The Court has long explained, too, that incorporated provision of the Bill or Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.

Ramos, *Id.*, at ___ (slip op., at 6-7).

Wherefore, as the non-unanimous jury verdict laws were based on racial discrimination (or Slavery), this Court must determine that the use of such is unconstitutional, as *any Law* based on discrimination must be considered Moot; and the fact that the United States Supreme Court has determined that a conviction by a non-unanimous jury verdict is unconstitutional, Mr. El-Amin should be granted Post-Conviction Relief in this matter.

CONCLUSION

Upon reviewing the language in the recent ruling by the United States Supreme Court in *Watkins v. Ackley*, 370 Or. 604 (12/30/22), which also discussed Louisiana in its final ruling, this Court should grant relief in this matter.

Respectfully submitted this 29 day of FEBUARY, 2023.

Sadat El-Amin

Sadat El-Amin #292961

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served by First Class United States Mail this _____ day of _____, 2023, upon counsel of record for Respondent, pursuant to Rule 29 at the following address: District Attorney's Office, 701 N. Columbia St., Covington, LA 70433

_____