

No. 19-5807

In the Supreme Court of the United States

THEDRICK EDWARDS,
Petitioner

vs.

DARREL VANNOY, WARDEN
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under AEDPA's rigorous standards, was the federal court wrong in determining that the Louisiana post-conviction court did not violate clearly established federal law where at the time of petitioner's conviction, at the time his conviction became final, *and* at the time the post-conviction court rendered its decision on this issue, not only did clearly established federal law not forbid non-unanimous juries—it expressly permitted them?

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INTRODUCTION

Petitioner Thedrick Edwards—who was convicted of kidnapping, rape, and robbery a decade ago—argues that Louisiana’s acceptance of the jury’s non-unanimous verdict was unconstitutional under the Sixth and Fourteenth Amendments. But this is a habeas case, and Edwards fails to acknowledge that the Antiterrorism and Effective Death Penalty Act (AEDPA) governs these proceedings. Edwards cannot meet AEDPA’s demanding standards.

Edwards failed to raise his constitutional argument against non-unanimous juries at trial or on direct appeal, thereby waiving the claim. He did, however, advance the claim in a petition for state post-conviction relief and the state court addressed it on the merits. Because the state court ruled on the merits, Edwards must show that the state court’s adjudication of his claim “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” to gain federal habeas relief under AEDPA. 28 U.S.C. § 2254(d). Edwards has not even attempted to make that showing here.

Even if Edwards had attempted to hurdle AEDPA’s strenuous requirements, he would fall short. As the state court explained—and even Edwards acknowledges in his petition here—this Court has undisputedly upheld the constitutionality of Louisiana’s non-unanimous jury verdict. *See* Pet. at 7; *Apodaca v. Oregon*, 406 U.S. 404 (1972). Thus, it is not clearly established *even now* that his verdict was unconstitutional, much less in 2007 at the time of his trial, in 2010 when his conviction became final, or in 2013 when the post-conviction court ruled.

Finally, the Fifth Circuit not only found Edwards' claims to be meritless, but it independently rejected his request for a certificate of appealability due to his failure to follow briefing requirements. Pet. Appx. at 6.¹ A petitioner cannot garble his brief at the circuit level and then reform his arguments before this Court. The State respectfully submits that the Court should deny Edwards' petition.

STATEMENT OF THE CASE

I. THE CRIMES²

Edwards, together with his accomplice Joshua Johnson, committed multiple rapes, kidnappings, and robberies all in the course of one evening. Their crimes began when they ambushed an LSU student on the evening of May 13, 2006. The two surprised the victim at gunpoint as he was getting out of his car. They demanded money and drove him to an ATM to withdraw funds; unfortunately, there was no money in his accounts. Following threats, the victim offered to let the two assailants into his apartment so they could take some of his possessions; they agreed.

While they were at the apartment, the victim's girlfriend called his phone. The kidnappers told him to act as though nothing was wrong and to make arrangements to meet with his girlfriend, which he did. The girlfriend agreed to meet the victim at a bar but on the way to the bar the kidnappers texted her, pretending to be the victim,

¹ The pages in Petitioner's Appendix are not numbered. For convenience, Respondent will refer to the page numbers as indicated on the PDF copy on the Court's website.

² All of these facts are taken from the Magistrate Judge's Report and Recommendation, included in Petitioner's Appendix. Pet'r. Appx. 9-11. The report, in turn, took its facts from the Louisiana First Circuit Court of Appeal's opinion on Edwards's direct appeal. *State v. Edwards*, 2008-2011 (La. App. 1 Cir. 6/12/09), 2009 WL 1655544.

and asked her to head back to her apartment. The kidnappers then drove to her apartment and forced the victim to knock on the door.

When the door opened, Edwards and his accomplice burst into the apartment and held the victim's girlfriend and two other girls at gunpoint. Edwards and his accomplice then raped two of the girls and forced one of them to perform oral sex. The attackers ransacked the apartment before leaving in the victim's car. Only at this point were the victim and the girls able to call for help. The victim of a subsequent similar armed robbery identified Petitioner as the perpetrator. He was arrested and ultimately confessed to his involvement in the kidnappings, armed robberies and the rapes.

II. PROCEDURAL HISTORY

Edwards was indicted with one count of aggravated rape, two counts of aggravated kidnapping, five counts of armed robbery, and one count of attempted armed robbery. He was convicted of all charged offenses except attempted robbery. The jury vote was eleven to one, with at least ten votes of "guilty" needed for a conviction. Pet. Appx. at 16. Edwards made no argument challenging his non-unanimous jury verdict before, during, or after trial. The court sentenced him to life imprisonment at hard labor without parole for each of the kidnapping and rape charges and thirty years of imprisonment at hard labor without parole for each of the robbery charges. *State v. Edwards*, 2008-2011 (La. App. 1 Cir. 6/12/09), 2009 WL 1655544, at *1. All sentences were to be served consecutively. *Id.*

Edwards appealed, but brought only a single assignment of error—the denial of his motion to suppress his confession. He did not claim his constitutional rights

were violated by the 11-1 jury verdict. His suppression argument failed, and the Louisiana First Circuit Court of Appeals affirmed his conviction. *Id.* at *5. The Louisiana Supreme Court denied Edwards' request for review. *State v. Edwards*, 2009-1612 (La. 12/17/10), 51 So.3d 27.

Edwards filed an application for state post-conviction relief in December 2011, including for the first time his argument against the use of non-unanimous juries. Although Edwards fails to mention it in his petition, on March 11, 2013, after consideration of the pleadings and objections, the state court commissioner issued recommendations on the merits of Edwards' claim. She found that Petitioner had acknowledged in his written argument that both the Louisiana Supreme Court and this Court had repeatedly upheld the use of non-unanimous jury verdicts and, thus, his allegations were factually and legally insufficient to support his claim that La. Code of Criminal Procedure art. 782 violated any constitutional or statutory right. Resp. Appx. A at 9. Because of this, she recommended that Petitioner's non-unanimous jury claim be dismissed for "failure to state sufficient legal or factual support for the claim." *Id.* (citing *State v. Interiano*, 03-1760, *4 (La. 2./13/04), 868 So.2d 9, 13 (A statute is presumed constitutional and the burden of proving a claim of unconstitutionality rests upon the party attacking the statute.))³ On April 26, 2013,

³ Petitioner also claimed that his counsel had been ineffective for not having objected to the non-unanimous verdict at trial. He has not made that claim in the federal courts or here. Nevertheless, because the analysis is somewhat analogous to the standard of review under AEDPA, it is relevant to consider the post-conviction court's ruling on that claim. The court found that it was "important to remember that in 2007, when the trial occurred, the jurisprudence from the highest court in this State, and the land, clearly upheld the constitutionality of the non-unanimous verdict. Consequently, based on the facts and the law applicable, counsel could not have been incompetent for failing to challenge a statutory procedure that was then accepted by this State and the United States Supreme Court." Resp. Appx. A at 10.

the post-conviction trial judge issued an Order dismissing the petitioner's application for post-conviction relief for the reasons set forth in the Commissioner's Recommendation. Resp. Appx. B.

Petitioner applied to the state circuit court for a supervisory writ which was denied due to petitioner's failure to include relevant transcripts or record evidence supporting his claims. *State v. Edwards*, 2013-1201 (La. App. 1 Cir. 10/28/13), 2013 WL 12120886. The denial was subsequently affirmed on appeal by the Louisiana Supreme Court. *State v. Edwards*, 2014-0889 (La. 2/13/15), 159 So.3d 456.⁴

Edwards then sought federal habeas relief in the Middle District of Louisiana. He raised six independent claims, one of which was that he was convicted by a non-unanimous jury. After thorough review of the federal law on state jury verdicts, the magistrate judge, acknowledging that to provide relief under AEDPA standards he must determine that no "clearly established federal law" supported petitioner's claims, held Petitioner could "claim no violation of federal law from his conviction by a non-unanimous verdict." Pet. Appx. at 11, 16-17. The district court adopted the Magistrate's findings of fact, conclusions of law, and recommendations, and denied relief. *Id.* at 3.

Edwards then sought a Certificate of Appealability (COA) from the Fifth Circuit, repeating the claims that he had made before the district court. The Fifth

⁴ Petitioner claims that he further sought relief in *this* Court after the state courts denied him post-conviction relief; however, there is no record evidence for this claim, and the State has been unable to find any petition for certiorari asking for review of the state courts' denial. If petitioner has come before this Court before and failed at that time to raise his non-unanimous jury challenge, that is yet another reason to deny relief.

Circuit denied relief, both because petitioner failed to comply with briefing requirements and because he failed on the merits to make the requisite showing for a COA, i.e. “a substantial showing of denial of a constitutional right” and that “jurists of reason could disagree with the district court’s resolution of his constitutional claim.” Pet. Appx. at 5-6 citing *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (discussing the requirements to obtain a COA in a habeas case). Edwards now seeks relief from this Court, raising only one claim: His conviction by a non-unanimous jury was unconstitutional.

REASONS TO DENY THE PETITION

AEDPA is applicable to this proceeding as Edwards’ habeas corpus application was filed after its effective date. *See Lindh v. Murphy*, 521 U.S. 320 (1997), and *Nobles v. Johnson*, 127 F.3d 409, 412–13 (5th Cir. 1997). However, Edwards does not even mention the AEDPA standard, let alone explain how he might meet it.

Under AEDPA, an application for a writ of habeas corpus shall not be granted unless the state court addressed the merits of the petitioner’s claim and the state court’s adjudication “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1). Edwards can make no such showing.

Furthermore, Edwards can show no conflict in precedent between circuit courts or state courts of last resort, two factors which would counsel in favor of certiorari. *See* Supreme Court Rule 10. In fact, all precedent up until this point supports the State’s position that conviction by a non-unanimous jury is

constitutional. See *Apodaca v. Oregon*, 406 U.S. 404 (1972); *State v. Johnson*, 406 U.S. 356 (1972); *State v. Bertrand*, 2008-2215 (La. 3/17/09), 6 So.3d 738.

Finally, the Fifth Circuit denied a Certificate of Appealability not only because Edwards failed to make the requisite showing for one, but also for his failure to follow briefing requirements. Edwards raises no argument in his petition why that conclusion was wrong.

For all of these reasons, the petition for certiorari should be denied.⁵

ARGUMENT

I. EDWARDS' CLAIMS FAIL UNDER AEDPA

A. The Petition Makes No Attempt to Address AEDPA's Requirements for Federal Habeas Relief

AEDPA was specifically designed to limit the powers of federal courts to overturn state criminal proceedings. To obtain habeas relief, a prisoner must show that the state court's adjudication of the merits of his claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). A prisoner must prove that the state's decision "was so lacking in justification that there was an error . . . beyond any possibility for fairminded disagreement." *Burt v. Titlow*, 571 U.S. 12, 20 (2013) (quoting *Harrington v. Richter*,

⁵ The petition contains some basic factual and legal errors. For example, the petition states that this Court has jurisdiction under 28 U.S.C. § 1257, which governs petitions for review of *state* court decisions. The correct statute for review of federal circuit court decisions is 28 U.S.C. § 1254(1). The petition also claims that the sole juror who voted not to convict petitioner was African-American; this claim may or may not be true, but the record does not support it.

131 S. Ct. 770, 786–87 (2011)). “If this standard is difficult to meet . . . that is because it was meant to be.” *Id.*

Edwards’ failure to even mention AEDPA should doom his petition. Granting certiorari in this case would force the Court to wade into a habeas review where the Question Presented did not address the correct legal standard nor did the petition present facts or argument to support a claim that the lower federal courts misapplied the standard. This error makes the case a poor vehicle for settling any question of law.

B. Edwards Cannot Show a Violation of Clearly Established Federal Law

Even if petitioner had engaged with the AEDPA standard, he could not satisfy its strenuous requirements. “The threshold question under AEDPA is whether [Edwards] seeks to apply a rule of law that was clearly established *at the time his state-court conviction became final*,” *Williams v. Taylor*, 529 U.S. 362, 390 (2000) (emphasis added), or at the time the state court renders its decision. *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). At the time of his conviction, at the time his conviction became final, and at the time the post-conviction court determined his conviction was constitutional, clearly established federal law stated that convictions by non-unanimous juries were constitutional. *See Apodaca*, 406 U.S. 404; *State v. Johnson*, 442 So. 2d 1141, 1145 (La. 1983) (collecting cases). *See also Bertrand*, 6 So.3d at 743 (“[W]e are not presumptuous enough to suppose, upon mere speculation, that the United States Supreme Court’s still valid determination that non-unanimous 12 person jury verdicts are constitutional may someday be overturned.”).

Petitioner argued below, and argues now, that the Louisiana court was wrong because “*subsequent* rulings by this Court calls the *current* application of *Apodaca* into question.” (sic) Pet. 7 (emphasis added). He cites a footnote in *McDonald v. City of Chicago*, 551 U.S. 3028 (2010) which references the decision in *Apodaca* to support his claim. But, even if this were true, this Court has clearly held that “Section 2254(d)(1)’s ‘clearly established’ phrase ‘refers to the holdings, as opposed to the dicta, of this Court’s decisions as of the time of the relevant state-court decision.’ *Lockyer*, 538 U.S. at 71 (2003) (citing *Williams*, 529 U.S. at 412). Edwards’ argument asks this Court to *change* the law; this is not the standard of review under AEDPA. Regardless of how the law may change in the future, there can be no doubt that at the time of petitioner’s conviction, at the time his conviction became final, and at the time the post-conviction court rendered its decision on this issue, not only did clearly established federal law not forbid non-unanimous juries—it expressly permitted them.

II. INDEPENDENT STATE LAW GROUNDS SUPPORT THE DENIAL OF RELIEF

Petitioner did not raise his constitutional claim until he sought state post-conviction relief. Although the state post-conviction court considered the merits of his claim, this state procedural default constitutes a waiver of the claim under Louisiana law which amounts to an adequate and independent state-law reason for denying his claim. *Cf. Michigan v. Long*, 463 U.S. 1032, 1038 (1983) (Supreme Court lacks jurisdiction to review state judgments if independent and adequate state-law grounds sustain the state court’s decision).

A party challenging the constitutionality of any provision of Louisiana law bears the burden of proving it is unconstitutional. *State v. Fleury*, 2001–0871 (La. 10/16/01), 799 So.2d 468, 472. The Louisiana Supreme Court “has expressed the challenger’s burden as a three-step analysis. First, a party must raise the unconstitutionality in the trial court; second, the unconstitutionality of a statute must be specially pleaded; and third, the grounds outlining the basis of unconstitutionality must be particularized.” *State v. Hatton*, 2007-2377 (La. 7/1/08); 985 So.2d 709, 719 (citing *Vallo v. Gayle Oil Co.*, 94–1238, p. 8 (La. 11/30/94), 646 So.2d 859, 864–65); *see also State v. Schoening*, 2000–0903, p. 3 (La. 10/17/00), 770 So.2d 762, 764). It is well-settled under Louisiana law that a constitutional challenge may not be considered by an appellate court unless it was properly pleaded and raised in the trial court below. *Hatton*, 985 So.2d at 718.

Furthermore, in addition to procedural laws relating to constitutional challenges, Louisiana law requires that “[a]n irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence.”⁶ La. Code Crim. Proc. art. 841. More specifically, an objection to a claimed improper jury instruction is procedurally required to raise the issue on appeal. *See State v. Rubens*, 2010-1114 (La. App. 4 Cir. 11/30/11), 83 So.3d 30, *writ denied* 2012-0399 (La. 10/12/12), 99 So.3d 37, *cert. denied Rubens v. Louisiana*, 568 U.S. 1236 (2013). Petitioner not only did not raise a claim that non-unanimous jury verdicts were unconstitutional before the trial

⁶ Federal law also provides that a party may not assign error to a jury instruction if he fails to object before the jury retires or to “state distinctly the matter to which that party objects and the grounds of that objection.” *Jones v. United States*, 527 U.S. 373, 387-88 (1999) (citing Fed. Rule Crim. Proc. art. 30).

court or ask for a unanimous verdict jury instruction, he did not raise it on appeal to any court. Thus, when the post-conviction court considered his application for relief, there was no record regarding the verdict or any prior court decision on this claim. Therefore, under La. Code of Criminal Procedure art. 930.4 (B), the post-conviction court *was required* to deny relief because the claim was one “of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction.”

Failure to comply with a state procedural rule is an independent and adequate state ground barring this Court’s review of a federal question. *Hathorn v. Lovorn*, 457 U.S. 255, 262–63 (1982) (citing *Michigan v. Tyler*, 436 U.S. 499, 512, n.7 (1978); *New York Times Co. v. Sullivan*, 376 U.S. 254, 264 n.4 (1964)). “[F]ederal law takes the state courts as it finds them.” *Id.* (quotation omitted). This rule is “bottomed deeply in belief in the importance of state control of State judicial procedure.” *Id.*

III. PETITIONER WAS DENIED A CERTIFICATE OF APPEALABILITY BY THE FIFTH CIRCUIT FOR AN ADDITIONAL REASON INDEPENDENT OF THE MERITS

Even though petitioner attempted to raise his non-unanimous jury argument at the Fifth Circuit, that court denied relief not only because Edwards’ claim failed on the merits, but also because petitioner failed to comply with briefing requirements. *See* Pet. Appx. at 6; *McGowen v. Thaler*, 675 F.3d 482, 497 (5th Cir. 2012) (inadequate briefing results in waiver of claims). This provides yet another reason to deny the petition. Edwards raises no claim in his petition for certiorari that the Fifth Circuit’s finding of inadequate briefing was incorrect, so even if he has a plausible claim on the merits, the Fifth Circuit was still correct to deny a COA. *Cf. Marshall v. Marshall*,

547 U.S. 293, 312–13 (2006) (where a circuit court gave multiple rationales in support of its decision, this Court needed to consider all rationales before overturning the lower court).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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