

IN THE  
SUPREME COURT OF THE UNITED STATES

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JASON KIGER — PETITIONER

VS.

TIM HOOPER, WARDEN — RESPONDENT(S)

APPENDICES

The Supreme Court of the State of Louisiana

JASON KIGER

No. 2021-KH-00952

VS.

DARRYL VANNOY, WARDEN, LOUISIANA  
STATE PENITENTIARY

-----  
IN RE: Jason Kiger - Applicant Plaintiff; Applying For Supervisory Writ, Parish of  
Jefferson, 24th Judicial District Court Number(s) 11-5087, Court of Appeal, Fifth  
Circuit, Number(s) 21-KH-254;  
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November 17, 2021

Writ application denied.

SJC

JDH

JTG

WJC

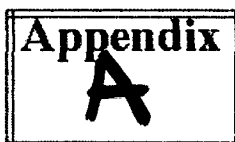
JBM

Weimer, C.J., would grant and assigns reasons.

Griffin, J., would grant for reasons assigned by Chief Justice Weimer.

Supreme Court of Louisiana  
November 17, 2021

Kristo Marjanovic  
Chief Deputy Clerk of Court  
For the Court



NOV 17 2021

**SUPREME COURT OF LOUISIANA**

**NO. 2021-KH-0952**

**JASON KIGER**

**VERSUS**

**DARREL VANNOY, WARDEN  
LOUISIANA STATE PENITENTIARY**

*ON SUPERVISORY WRIT TO THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,  
PARISH OF JEFFERSON*

*JW* **WEIMER, C.J.**, would grant to address the retroactivity of **Ramos v. Louisiana**, 140  
S.Ct. 1390, 206 L.Ed. 2d 583 (2020).

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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. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETN, 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 06/18/2021 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-254**

**E-NOTIFIED**

24th Judicial District Court (Clerk)

Honorable Donald A. Rowan, Jr. (DISTRICT JUDGE)

Grant L. Willis (Respondent)

Thomas J. Butler (Respondent)

**MAILED**

Honorable Jeffrey M. Landry (Respondent)

Attorney General

Louisiana Department of Justice

1885 North 3rd Street

6th Floor, Livingston Building

Baton Rouge, LA 70802

Jason Kiger #604863 (Relator)

Louisiana State Penitentiary

Angola, LA 70712

Appendix  
**B**

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JASON KIGER

NO. 21-KH-254

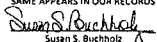
VERSUS

FIFTH CIRCUIT

DARRYL VANNOY, WARDEN,  
LOUISIANA STATE PENITENTIARY

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

June 18, 2021

Susan Buchholz  
First Deputy Clerk

**\*\*CONFIDENTIAL\*\***  
**LSA-RS 46:1844(W)**  
**ATTORNEYS OF RECORD**  
**ONLY**

IN RE JASON KIGER

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,  
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE DONALD A.  
ROWAN, JR., DIVISION "L", NUMBER 11-5087

Panel composed of Judges Susan M. Chehardy,  
Fredericka Homberg Wicker, and Jude G. Gravois

### WRIT DENIED

Relator, Jason Kiger, seeks review of the trial court's April 29, 2021 denial of his application for post-conviction relief, contending that the trial court erred in failing to grant him a new trial in light of the United States Supreme Court's recent decision in *Ramos v. Louisiana*, 590 U.S. \_\_\_, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020). For the following reasons, we deny the writ.

On October 23, 2012, relator was found guilty by a jury of aggravated rape in violation of La. R.S. 14:42. The verdict was nonunanimous. On November 9, 2012, the trial court sentenced him to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. This Court affirmed relator's conviction and sentence on October 30, 2013. *State v. Kiger*, 13-69 (La. App. 5 Cir. 10/30/13), 128 So.3d 552.

On April 21, 2021, relator filed an application for post-conviction relief, contending that his non-unanimous jury verdict as to his aggravated rape conviction was unconstitutional and insufficient to sustain his conviction and sentence in light of the United States Supreme Court's *Ramos* decision. In this writ application, relator seeks review of the trial court's April 29, 2021 denial of his application for post-conviction relief.

La. C.Cr.P. art. 930.8 (A)(2) permits a defendant to seek post-conviction relief outside of the applicable time limitations if "the claim ... is based upon a final ruling of an appeal court establishing a theretofore unknown interpretation of constitutional law *and petitioner establishes that this interpretation is retroactively*

*applicable to his case[.]*” (Emphasis added). *Ramos*, which held that a defendant who is tried for a serious crime has a right to a unanimous jury verdict, applies only to cases pending on direct appeal and to future cases. 140 S.Ct. at 1407.

Moreover, the United States Supreme Court has determined that the jury-unanimity rule in *Ramos* does not apply retroactively on federal collateral review. *Edwards v. Vannoy*, 593 U.S. --, 141 S.Ct. 1547, 1554 (2021). The *Edwards* Court determined, however, that states remain free to retroactively apply the jury-unanimity rule as a matter of state law in state post-conviction proceedings if they choose to do so. 141 S.Ct. at 1559, n.6 (citing *Danforth v. Minnesota*, 552 U.S. 264, 282, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008)).

At the time of relator’s 2012 conviction, a non-unanimous jury verdict was not unconstitutional under *Apodaca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972), and relator’s conviction became final prior to the *Ramos* decision. *Edwards* holds that *Ramos* is not retroactive, and Louisiana state laws currently do not provide that jury unanimity applies to serious offenses occurring before January 1, 2019, nor that the unanimity requirement applies retroactively to cases on collateral review.<sup>1</sup> Accordingly, the trial court did not err in determining that relator failed to prove that he was entitled to post-conviction relief. Relator’s writ application is denied.

Gretna, Louisiana, this 18th day of June, 2021.

FHW  
SMC  
JGG

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<sup>1</sup> At this time, Louisiana law provides: “A case for an offense committed prior to January 1, 2019, in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. A case for an offense committed on or after January 1, 2019, in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, all of whom must concur to render a verdict.” La. Const. Art. 1, § 17; La. C.Cr.P. art. 782 (A). *Edwards* does not repudiate these provisions. See *Edwards*, 141 S.Ct. at 1559-60 (2021).

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