

IN THE
SUPREME COURT OF THE UNITED STATES

JASON KIGER — PETITIONER

VS.

TIM HOOPER, WARDEN — RESPONDENT(S)

APPENDICES

The Supreme Court of the State of Louisiana

JASON KIGER

VS.

No. 2021-KH-00952

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;

November 17, 2021

Writ application denied.

SJC

JDH

JTG

WJC

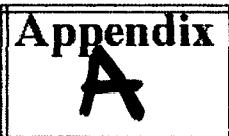
JBM

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

Kathy 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).

2

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LIJEBERG
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 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) Jason Kiger #604863 (Relator)
Attorney General Louisiana State Penitentiary
Louisiana Department of Justice Angola, LA 70712
1885 North 3rd Street
6th Floor, Livingston Building
Baton Rouge, LA 70802

Appendix
B

1

3

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. Chehاردی,
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.¹ 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

¹ 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.**