

NO. 2021-K-0597

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

JULIO MELENDEZ

IN RE: JULIO MELENDEZ

APPLYING FOR: SUPERVISORY WRIT

DIRECTED TO: HONORABLE ERIC A. BOPP  
ST. BERNARD 34TH JUDICIAL DISTRICT COURT  
DIVISION "E", 109-111

**WRIT GRANTED; REVERSED**

Relator, Julio Melendez, seeks supervisory review of the district court's August 24, 2021 judgment denying his application for post-conviction relief. Relator asserts his conviction by a non-unanimous jury was in violation of the U.S. Constitution per *Ramos v. Louisiana*, 590 U.S. \_\_\_, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020).

Relator was indicted on a charge of second-degree murder, and pled not guilty. Following a July 14, 1987 trial, the jury returned with a verdict, on July 15th, 1987, finding Petitioner guilty of second degree murder by an 11-1 vote. The district court sentenced Relator to the mandatory sentence of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.

On February 17, 2021, Relator filed an application for post-conviction relief alleging that he was convicted by a non-unanimous jury and asserts *Ramos* should apply retroactively to his conviction. Following an August 24, 2021 hearing, the

district court denied the application. Relator subsequently filed a notice of intent to seek writs to this Court. A return date was set for October 21, 2021.

In *Ramos*, the United States Supreme Court reversed the conviction of Evangelisto Ramos holding Louisiana’s non-unanimous jury system violated the Sixth Amendment of the United States Constitution. *Ramos*, 140 S.Ct. at 1408.

Following *Ramos*, the United States Supreme Court decided unequivocally that the rule set out in *Ramos* does not apply on collateral review in federal proceedings. *Edwards v. Vannoy*, 593 U.S. \_\_\_, 141 S.Ct. 1547, 1559 (2021). However, the opinion expressly provided that states were free to determine whether or not to apply *Ramos* retroactively. *Id.* at 1559 n. 6 (“The *Ramos* rule does not apply retroactively on *federal* collateral review. States remain free, if they choose, to retroactively apply the jury-unanimity rule as a matter of state law in state post-conviction proceedings”).

The Louisiana Supreme Court has yet to provide guidance either way regarding the retroactivity of *Ramos* to state post-conviction relief; however, this does not prohibit this Court from making its own ruling on the issue of applying *Ramos* retroactively.

Before determining whether *Ramos* should apply retroactively, we briefly examine the history of Louisiana’s use of non-unanimous juries. Prior to 1898, Louisiana required a unanimous jury verdict for convictions. Kyle R. Satterfield, *Circumventing Apodaca: An Equal Protection Challenge to Nonunanimous Jury Verdicts in Louisiana*, 90 Tul. L. Rev. 693, 697 (2016). The decision to change evolved from escalating racial tensions following the 1880 United States Supreme Court decision in *Strader v West Virginia* ruling—states could no longer systematically exclude citizens from serving on juries based solely on their race. *Id.* at 696. In 1898, Louisiana convened a Constitutional Convention with the purpose “to establish the supremacy of the white race.” *Id.* At this convention, article 116

was passed stating, “cases in which the punishment is necessarily at hard labor [shall be tried] by a jury of twelve, nine of whom concurring may render a verdict.” *Id.* at 697-98 (alteration in original). The majority number was later raised to ten (10) during the Louisiana Constitutional Convention of 1973. *Id.* at 698.

This change had a profound effect on non-white defendants. In *Ramos*, the Innocence Project of New Orleans submitted an amicus brief identifying thirty (30) cases in which the defendant was convicted by a non-unanimous jury and later exonerated. Brief of Innocence Project New Orleans as *Amicus Curiae* in Support of Petitioner at 8, *Ramos v. Louisiana*, 140 S. Ct. 1390, 1398, 206 L. Ed. 2d 583 (2020) (No. 18-5924). Louisiana’s policy of permitting non-unanimous jury verdicts has been used to “inhibit black prospective jurors from serving on juries through the strategic use of peremptory challenges.” Satterfield, *Circumventing Apodaca, supra*, at 703.

Considering the historically racist motivations behind the adoption of the non-unanimous jury verdict practice, this Court finds the practice, from its inception, was not steeped in fairness. Therefore, in the interest of justice and fundamental fairness, we hereby grant the writ and reverse the judgment of the district court.

New Orleans, Louisiana this 10<sup>th</sup> day of November, 2021.

RBW

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JUDGE REGINA BARTHOLOMEW-WOODS

BELSOME, J., CONCURS IN THE RESULT

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JUDGE ROLAND L. BELSOME

LOBRANO, J., DISSENTS WITH REASONS

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JUDGE JOY COSSICH LOBRANO