SUPREME COURT OF LOUISIANA

No. 2021-KP-01893

STATE OF LOUISIANA,
Applicant

v.

REGINALD REDDICK
Respondent

On Supervisory and/or Remedial Writs
Twenty-Fifth Judicial District Court, Parish of Plaquemines,
No. 93-03922;
Court of Appeal, Fourth Circuit, No. 2021-K-0589

Louisiana's Reply Brief

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

SUMMARY OF THE ARGUMENT

The State respectfully asks this Court to follow the United States Supreme Court's lead in *Edwards v. Vannoy* and acknowledge that the so-called "watershed" exception to the retroactivity bar is "moribund" for the purposes of state collateral review. 141 S. Ct. 1547, 1560 (2021). The unanimity rule of *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), is new and procedural, and so under the reasoning of *Edwards* it should not apply retroactively. But even if this Court keeps the "empty promise" of the watershed exception alive for the purposes of state collateral review, *Ramos* did not announce a watershed rule, for all the reasons explained in *Edwards* and the State's original brief here. *Id.*

Petitioner Reginald Reddick resists the logic of *Edwards* and even asks this Court to *add* an exception to the bar on applying new rules retroactively to include a "'Jim Crow' retroactivity test." Resp. Br. at 36. This Court should do no such thing. As the Supreme Court observed in *Edwards*, racial considerations do not affect the retroactivity calculus—otherwise *Batson v. Kentucky*, 476 U.S. 79 (1986), would have applied retroactively. *See Edwards*, 141 S. Ct. at 1559. Reddick supports his arguments with a district court's order in State v. Maxie, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018). But this Court has already held that Maxie has no binding effect in future cases. *State v. Hodge*, 2019-0568 (La. 11/19/19), 286 So. 3d 1023, 1028. Even if race factored into the analysis, history cuts against making *Ramos* retroactive because Louisiana's 1973 Constitutional Convention undoubtably passed the non-unanimity rule for race neutral reasons.

Reddick further argues that "Louisiana's Constitution should influence the retroactivity standard." *Id.* at 29. This argument also fails. The People spoke clearly when they amended the Louisiana Constitution to end non-unanimity: They wanted the new unanimity rule to apply only *prospectively*. La. Const. art. I, § 17. To the

extent that the Louisiana Constitution matters to the retroactivity analysis, it requires ruling for the State.

ARGUMENT

I. LOUISIANA'S CONSTITUTION APPLIES UNANIMITY PROSPECTIVELY

Reddick argues "Louisiana's Constitution should influence the retroactivity standard." Resp. Br. at 29. The State agrees. The People's will, as reflected by the Louisiana Constitution, should be considered when deciding whether to make *Ramos* retroactive on state collateral review. The People spoke clearly on the issue: They want *prospective* application of the unanimity rule. La. Const. art. I, § 17.

As an initial matter, Reddick is wrong when he says *Ramos* "ended" non-unanimity in Louisiana. Resp. Br. at 14. The People, in fact, did that by constitutional amendment in late 2018, before the United States Supreme Court had even agreed to hear *Ramos*. Art. I, § 17. The amendment requires a unanimous jury conviction for any "offense committed on or after January 1, 2019, in which the punishment is necessarily confinement at hard labor." *Id.* The United States Supreme Court did not agree to hear *Ramos* until March 18, 2019. *Ramos v. Louisiana*, 139 S. Ct. 1318 (2019). And the Court did not issue a decision in *Ramos* until April 20, 2020. 140 S. Ct. at 1391. Thus, the non-unanimity rule had effectively ended more than a year before *Ramos* was decided.[1]

Importantly, the People expressly made the new unanimity rule apply *prospectively*. *See* Art. I, § 17. The constitutional amendment required the *non*-unanimity rule to apply to any offender who committed an offense *before* January 1, 2019. *Id.* ("A case for an offense committed *prior* to January 1, 2019, in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, *ten of whom must concur to render a verdict*." (emphasis added)).

[1] To be sure, the *Ramos* rule applied to some offenders whose cases remained pending on direct review even though they had committed offenses before January 1, 2019. But Reddick's argument that *Ramos* ended "the last Jim Crow law" fails to acknowledge the importance of the State's 2018 amendment. Resp. Br. at 14.

Reddick murdered Al Moliere in 1993, decades before January 1, 2019. The People clearly do not want Reddick to benefit from the new unanimity rule.

In light of the People's clear articulation of their desire for prospective application of the unanimity rule, Reddick is simply wrong when he argues that failing to apply *Ramos* retroactively would "violate the letter and spirit" of Louisiana's constitutional guarantee of Individual Dignity. Resp. Br. at 31. If anything, applying *Ramos* retroactively would "violate the letter and spirit" of article I, § 17. The Court should respect the will of Louisiana's voters and decline to make *Ramos* retroactive.

II. THIS COURT HAS ALREADY CONCLUDED MAXIE IS NOT BINDING

Reddick's brief relies repeatedly on an order and transcript from a district court case called State v. Maxie, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018). *See, e.g.*, Resp. Br. at 8 n.9, 10, n.25 & n.29, 15 n.76, 17 ("The Maxie court's analysis on the racial disparity in defendants convicted by non-unanimous verdicts—an analysis the trial court had before it in this case—showed that Louisiana convicted Black defendants by non-unanimous juries 43% of the time, and White defendants 33% of the time."). If Reddick hopes to smuggle the Maxie court's conclusions and findings into this case, the Court should reject this effort, as it has done before.

Whether or not Maxie has any binding effect in subsequent cases was the subject of this Court's opinion in *State v. Hodge*. *See* 286 So. 3d at 1028. The district court in *Hodge* relied on its prior decision in Maxie to declare the non-unanimity rule unconstitutional under the Fourteenth Amendment. *See id*. at 1025 ("The next day, without a hearing, the district court signed an order . . . declaring that the defendant is entitled to a unanimous jury verdict pursuant to the district court's own earlier ruling in [Maxie]."). The district court's ruling was based on Maxie alone; no evidence was considered. Therefore, the State was unable to test the credibility of Maxie's findings in *Hodge*.

This Court reversed the district court by a 6-1 vote, observing that the district court had effectively declared the non-unanimity rule unconstitutional "*sua sponte*"—

id. at 1027—and that the *sua sponte* ruling allowed the defendant in *Hodge* to circumvent his burden to prove the non-unanimity rule unconstitutional. *Id.* (observing it is well established that "the party challenging the validity of [a law] bears the burden of proving it is unconstitutional." (quoting *State v. Hatton*, 2007-2377 (La. 7/1/08), 985 So. 2d 709, 719)).

Like the defendant in *Hodge*, Reddick is attempting to rely on the district court's findings in Maxie—which was a Fourteenth Amendment case (not a Sixth Amendment case like *Ramos*) and did not address the issue of retroactivity in any way. And just as in *Hodge*, Reddick is attempting to shoehorn into the record non-expert statistical reports, analysis, and newspaper articles by journalists and academics that were submitted in the Maxie case. Without subjecting these reports to judicial evidentiary standards, Reddick seeks to have this Court accept them as fact when there is no way to adequately traverse the legitimacy of their claims. The Court should again reject this subversion of the usual litigation process.

In any event, the district court's ruling in Maxie cannot aid Reddick because considerations of race are simply irrelevant to the retroactivity calculus—especially if this Court follows the Supreme Court's lead in *Edwards* and declares the watershed exception "moribund" for the purposes of state collateral review. 141 S. Ct. at 1560. In that instance, the only question for the Court would be whether *Ramos* issued a new, procedural rule after Reddick's conviction and sentence became final. There is no dispute that the *Ramos* rule is new and procedural, and *Ramos* was decided decades after Reddick's case became final.

Even if this Court chooses to keep the possibility of a procedural "watershed" rule alive, there is still no need to consider the Fourteenth Amendment Equal Protection issues from Maxie. The only questions for the court under the traditional analysis—as articulated in *Teague v. Lane* and later adopted by this Court in *State ex rel. Taylor v. Whitley*—is (1) whether the unanimity rule "remedied an

impermissibly large risk of an inaccurate conviction"; and (2) whether the *Ramos* rule "alter[s] our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (cleaned up); *see Teague v. Lane*, 489 U.S. 288 (1989); *State ex rel. Taylor v. Whitley*, 606 So. 2d 1292 (La. 1992). If race mattered to the retroactivity analysis, surely this Court or the United States Supreme Court would have made the rule from *Batson* retroactive. For the reasons explained by the Supreme Court in *Edwards*, the *Ramos* rule is not watershed. *Edwards*, 141 S. Ct. at 1559.

III. THE COURT SHOULD NOT ADD EXCEPTIONS TO THE RETROACTIVITY BAR

The Court should not add any exceptions to *Teague*'s retroactivity bar. On the contrary, the Court should officially *end* the exception for new procedural rules—as the Supreme Court did in *Edwards*. Even if this Court decides to inject historical and racial considerations into the retroactivity analysis, the history of the non-unanimity rule cuts against applying *Ramos* retroactively. As explained in the State's original brief, Louisiana's 1973 Constitutional Convention passed sweeping guarantees of equality. La. Const. art. I, § 12 ("[E]very person shall be free from discrimination based on race."); *see id.* § 3 ("No law shall discriminate against a person because of race . . . ."); *see* State's Br. at 23–27. The Constitutional Convention—which occurred not long after the United States Supreme Court upheld the non-unanimity rule in *Apodaca v. Oregon*, 406 U.S. 404 (1972)—passed a narrower version of the non-unanimity rule than what had existed under previous iterations of the Louisiana Constitution. Reddick was convicted decades after the 1973 Convention.

Reddick details at length *Ramos*' discussion of Louisiana's 1898 Constitutional Convention, which deplorably and infamously sought to "establish the supremacy of the white race." Resp. Br. at 16 (quoting *Ramos*, 140 S. Ct. at 1394). But Reddick's reliance on this discussion is misplaced. One of the central questions before the Supreme Court in *Ramos* was whether to overrule *Apodaca*. The Supreme Court

expressly observed that the alleged[2] racial history of the non-unanimity rule was relevant because *Apodaca* was decided *before* the 1973 convention. *Ramos*, 140 S. Ct. at 1401 n.44 (observing "Louisiana and Oregon eventually recodified their nonunanimous jury laws in new proceedings untainted by racism"—but that was insufficient to save *Apodaca* because Louisiana's Constitutional Convention "proceedings took place only after the Court's decision" in *Apodaca*).

In sum, this Court should decline Reddick's invitation to inject the issue of race into the retroactivity analysis. But even if the Court is inclined to consider the issue, *Ramos* should not apply retroactively.

CONCLUSION

The State respectfully urges the Court to reverse the lower court's decision and hold that new procedural rules never apply retroactively on state post-conviction review. Alternatively, the State asks the Court to reverse the lower court and hold that *Ramos* did not announce a new "watershed" rule of criminal procedure.

Respectfully Submitted,

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[2] The State has never conceded that the non-unanimity rule was the product of racial animus. In *Ramos*, the State explained the history of rule. *See* La. Br. at 36–39, available at https://www.supremecourt.gov/DocketPDF/18/18-5924/112629/20190816150657072_18-5924%20Respondent%20BOM.pdf.

CERTIFICATE OF SERVICE

I certify that all of the information contained in Louisiana's Reply Brief, by the State of Louisiana through the Attorney General, is true and correct to the best of my knowledge. I further certify that a copy of this brief has been mailed, by United States Mail or Federal Express, postage prepaid, on May 5, 2022, to all known counsel of record and the district court judge, as follows:

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