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February 9, 2021

VIA FACSIMILE: (985) 497-6941 and U.S. MAIL

St. John the Baptist Parish Clerk of Court
40th Judicial District Court
2393 LA-18
Edgard, LA, 70049

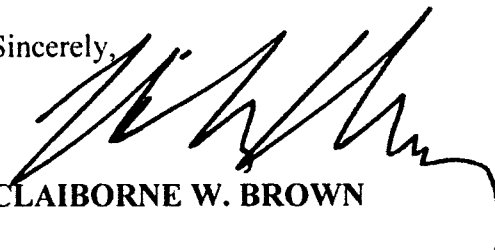
Re: State of Louisiana versus Errol Victor, Sr., 40th J.D.C., St. John the Baptist Parish, Docket No. 2010-CR-172, Div. B

Dear Sir/Madame:

Enclosed please find the *Motion to Quash - Untimeliness* regarding the above captioned matter.

Thank you for your assistance.

Sincerely,



CLAIBORNE W. BROWN

CWB/cb

Enclosures: *Motion to Quash - Untimeliness*

cc: AAg Grant Willis (*via* electronic mail w/encl.)

40TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST

STATE OF LOUISIANA

NO. 2010-CR-172

DIVISION: "B"

STATE OF LOUISIANA

versus

ERROL VICTOR, SR.

FILED: _____

DEPUTY CLERK

**MOTION TO QUASH INDICTMENT
UNTIMELINESS**

NOW INTO COURT, through undersigned counsel, comes defendant, Errol Victor, Sr. who moves this Honorable Court, pursuant to La. C. Cr. P. Articles 532(7), to quash the April 12, 2010 indictment in this case for failure of the State to timely bring defendant to trial as required under La. C. Cr. P. Article 578.

Background

1.

On April 15, 2008, the State of Louisiana initially charged defendant, by grand jury indictment, with first degree murder, in violation of La. R.S. 14:30. Defendant's case was randomly allotted to Division "A" under case number 2008-CR-165 of this Court, Judge Madeline Jasmine presiding. Defendant pled not guilty at arraignment.

2.

The initial charges stemmed from the death of defendant's eight year old stepson on April 1, 2008, when he suffered from undetermined causes resulting in what can best be described at this point as widespread massive hemorrhaging and respiratory failure. Defendant was not present at home at the time. Defendant did return home after his wife reported that his stepson was having breathing problems. Defendant also brought his stepson to the hospital, where he tragically passed away later that day. As a result of the death of defendant's stepson, and in part from the purported findings of the forensic pathologist and coroner (the validity and veracity of

which are specifically contested by defendant herein), the State brought this prosecution against the defendant herein.

3.

On September 22, 2009, the charges were amended by indictment to second degree murder, while engaged in the perpetration of the crime of cruelty to a juvenile, in violation of La. R.S. 14:30.1(A)(2)(b).

4.

On February 4, 2010, the Division "A" trial judge granted a defense motion to quash the initial indictment due to the potential improper conduct of the St. John the Baptist Sheriff's Office ("SJBSO") with respect to both the grand jurors and grand jury witnesses. Specifically, the basis of the motion to quash was that a deputy of the SJBSO, though a properly impaneled grand juror, wore his deputy shirt while participating in the grand jury process, clearly displaying his affiliation with the SJBSO. In granting the motion to quash, the Division "A" trial judge noted not only the potential impact on fellow grand jurors, but focused specifically, and materially, upon the potential effect on witnesses testifying before the grand jury to "influence, suppress or alter testimony to the prejudice of the defendant."

5.

After initially filing for reconsideration and/or appeal of the judgment, on April 6, 2010, the State filed a notice of dismissal without prejudice of all pending charges in defendant's case. Six days later, on April 12, 2010, a newly empanelled grand jury re-indicted defendant with second degree murder. Notwithstanding the clear requirements of Louisiana Uniform District Court Rule 14.1, the case was randomly allotted to Division "B" under the above case number 2010-CR-172. The defendant explicitly objected to the re-allotment of the case to Division "B".

6.

On August 1, 2014, defendant was convicted as charged by non-unanimous 10-2 verdict. On September 15, 2014, defendant was sentenced to life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence.

7.

Petitioner appealed the August 1, 2014 conviction to the Louisiana Fifth Circuit Court of Appeal, which affirmed petitioner's conviction on May 26, 2016. Petitioner applied for writ's with the Louisiana Supreme Court, which considered and denied his application for writ on October 15, 2018. On November 6, 2019, petitioner filed for reconsideration of the denial of writs by the Louisiana Supreme Court, which refused reconsideration on February 11, 2019.

8.

On May 9, 2019, defendant filed a Petition for Writ of Certiorari with the United States Supreme Court challenging the decision of the Louisiana Fifth Circuit Court of Appeal under 18 U.S.C. § 1257.

9.

On April 20, 2020 the United States Supreme Court rendered its decision in the case of *Ramos v. Louisiana*, 18-5924 (4/20/2020), 590 U.S. _____. In that case, the U.S. Supreme Court held that “the Sixth Amendment right to a jury trial – as incorporated against the States by way of the Fourteenth Amendment – requires a unanimous verdict to convict a defendant of a serious offense.” *Id.* at pp. 1, 7. In so holding, the U.S. Supreme Court made the following pointed observation regarding the practice of the State of Louisiana in maintaining non-unanimous jury convictions:

On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life? Not a single member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment. No one before us suggests that the error was harmless. Louisiana does not claim precedent commands an affirmance. In the end, the best anyone can seem to muster against Mr. Ramos is that, if we dared to admit in his case what we all know to be true about the Sixth Amendment, we might have to say the same in some others. But where is the justice in that? Every judge must live with the fact that he or she will make some mistakes; it comes with the territory. But it is something else entirely to **perpetuate something we all know to be wrong** only because we fear the consequences of being right.

Ramos, 18-5924, J. Gorsuch Opin. at p.26 (emphasis added).

10.

On April 27, 2020, the United States Supreme Court granted certiorari on defendant's petition, vacated the May 26, 2016 judgment of the Louisiana Fifth Circuit Court of Appeal, and remanded the case "for further consideration in light of *Ramos v. Louisiana*, 590 U.S. _____. See Ex. "A".

11.

On June 19, 2020, the Louisiana Fifth Circuit, pursuant to the U.S. Supreme Court ruling in *Ramos* vacated defendant's August 1, 2014 sentence and conviction. See Ex. "A".

Motion to Quash Indictment: Untimeliness

12.

La. C. Cr. P. Article 532(7) provides that a motion to quash an indictment may be based on expiration of the time limitation for commencement of trial. *Id.*

13.

La. C. Cr. P. Article 578 specifically provides that "no trial shall be commenced nor any bail obligation be enforceable: "(1) In capital cases after three years from the date of institution of the prosecution; (2) In other felony cases after two years from the date of institution of the prosecution." *Id.* Once an accused shows that the state failed to bring him/her to trial within the time periods specified by La. C. Cr. P. article 578, the state bears a heavy burden of demonstrating that either an interruption or a suspension of the time limit tolled prescription. *State v. Morris*, 99-3235 (La. 2/18/00), 755 So. 2d 205, 205; *State v. Joseph*, 93-2734, p.1 (La. 6/3/94), 630 So. 2d 1032.


14.

Assuming the prescriptive period had been interrupted and commenced as of the date of defendant's "conviction" on August 1, 2014, more than two years have passed since that time, with the defendant not having been brought to trial, as required under La. C. Cr. P. Article 578 for a non-capital felony. Furthermore, defendant's previously vacated conviction does not serve as an interruption to the prescriptive period of La. C. Cr. P. Article 578, as that conviction was based upon a constitutional violation that "we all [knew] to be wrong", as per the United States Supreme Court in *Ramos*. As such, the State should not be entitled to benefit from its patently

wrongful practice of maintaining non-unanimous convictions to avoid its obligations under Article 578.

WHEREFORE, defendant herein prays that this Honorable Court, pursuant to La. C. Cr. P. Article 532(7), quash the April 10, 2010 indictment in this matter for violation of the prescriptive period under La. C. Cr. P. Article 578.

Respectfully Submitted;



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40TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST

STATE OF LOUISIANA

NO. 2010-CR-172

DIVISION: "B"

STATE OF LOUISIANA

versus

ERROL VICTOR, SR.

FILED: _____ DEPUTY CLERK

ORDER

Considering the foregoing Motion;

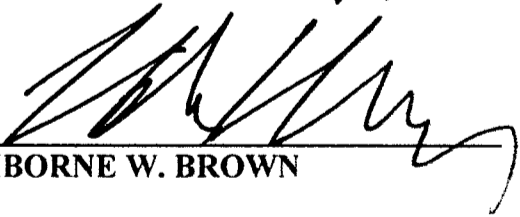
IT IS HEREBY ORDERED, that State of Louisiana show cause on the _____ day of _____, 2021 at _____ a.m. why the relief in the foregoing Motion to Quash should not be granted.

EDGARD, LOUISIANA, this _____ day of February, 2021.

JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing motion has been forwarded to the office of the Louisiana Attorney General by placing a copy of same in the U.S. Mail, postage prepaid, by electronic mail, by hand delivery or facsimile, this 9th day of February, 2021.



CLAIBORNE W. BROWN

STATE OF LOUISIANA

NO. 15-KA-339

VERSUS

FIFTH CIRCUIT

ERROL VICTOR, SR.

COURT OF APPEAL

STATE OF LOUISIANA

ON REMAND FROM THE UNITED STATES SUPREME COURT
AN APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 10,172, DIVISION "B"
HONORABLE MARY H. BECNEL, JUDGE PRESIDING

June 19, 2020

JUDE G. GRAVOIS
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Marc E. Johnson

CONVICTION AND SENTENCE VACATED; REMANDED

JGG

SMC

MEJ

Ex. "A"

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Jeffrey M. Landry
Grant L. Willis
Christopher N. Walters

COUNSEL FOR DEFENDANT/APPELLANT,
ERROL VICTOR, SR.

Claiborne W. Brown

GRAVOIS, J.

ON REMAND FROM THE UNITED STATES SUPREME COURT

On April 12, 2010, a St. John the Baptist Parish Grand Jury indicted defendant, Errol Victor, Sr., with the second degree murder of defendant's stepson, M.L. Lloyd, III, while engaged in the perpetration of the crime of cruelty to a juvenile, in violation of La. R.S. 14:30.1(A)(2)(b). Trial commenced before a twelve-person jury on July 22, 2014. On August 1, 2014, the jury returned a verdict of guilty as charged. The verdict was non-unanimous (10/12).

Prior to sentencing, defendant filed several post-verdict motions, including a motion for post-verdict judgment of acquittal, motion in arrest of judgment, and motion for a new trial, all of which were denied by the trial court on August 25, 2014. On September 15, 2014, defendant was sentenced by the trial court to life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence, to run consecutively with any other sentence defendant may have been serving. Defendant's conviction and sentence were affirmed by this Court on appeal. His writ to the Louisiana Supreme Court was denied. On April 27, 2020, the United States Supreme Court granted certiorari, vacated the judgment, and remanded the matter to this Court for further consideration in light of *Ramos v. Louisiana*, No. 18-5924, 590 U.S. ---, 140 S.Ct. 1390, --- L.Ed.2d ---, (2020), 2020 WL 1906545.¹ See *State v. Victor*, 15-339 (La. App. 5 Cir. 5/26/16), 195 So.3d 128, writ denied, 16-1516 (La. 10/15/18), 253 So.3d

¹ The grant of certiorari by the United States Supreme Court in this case reads in its entirety as follows, to-wit:

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Appeal of Louisiana, Fifth Circuit for further consideration in light of *Ramos v. Louisiana*, 590 U.S. ___ (2020). Justice Alito, concurring in the decision to grant, vacate, and remand: In this and in all other cases in which the Court grants, vacates, and remands in light of *Ramos v. Louisiana*, I concur in the judgment on the understanding that the Court is not deciding or expressing a view on whether the question was properly raised below but is instead leaving that question to be decided on remand. Justice Thomas would deny the petition for a writ of certiorari.

shall be punished by life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. Since the punishment for this offense is necessarily confinement at hard labor, a jury of twelve persons was required. *See* La. Const. Art. I, § 17; La. C.Cr.P. art. 782.³

Non-unanimous jury verdicts were previously allowed under both La. Const. Art. I, § 17 and La. C.Cr.P. art. 782, and the circumstances of the instant case. However, in *Ramos*, the United States Supreme Court found that the Sixth Amendment right to a jury trial—as incorporated against the States by the Fourteenth Amendment—requires a unanimous verdict to convict a defendant of a serious offense. The Court concluded:

There can be no question either that the Sixth Amendment’s unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury trial is “fundamental to the American scheme of justice” and incorporated against the States under the Fourteenth Amendment. This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment’s right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court. (Footnotes omitted.)

Ramos, supra, 140 S.Ct. at 1397.

For purposes of the Sixth Amendment, federal law defines petty offenses as offenses subject to imprisonment of six months or less, and serious offenses as offenses subject to imprisonment of over six months. The Sixth Amendment’s right to a jury trial only attaches to serious offenses. *See generally Lewis v. United States*, 518 U.S. 322, 327-28, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); *Hill v. Louisiana*, 2013 WL 486691 (E.D. La. 2013).

³ Both La. Const. Art. I, § 17 and La. C.Cr.P. art. 782(A) provide, in pertinent part, that 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, and that 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.

Circuit for further consideration in light of *Ramos v. Louisiana*, 590 U. S. ____ (2020).

April 27, 2020

Victor v. Louisiana, supra (mandate issued on May 29, 2020).

In the meantime, on May 1, 2020, following the United States Supreme Court's April 27, 2020 grant of certiorari noted above, but prior to that Court's issuance of its judgment and mandate in this case on May 29, 2020, defendant filed in this Court a Motion to Remand this matter to the district court in order to file various motions in the district court. This Court granted that motion, although prematurely, on May 14, 2020, but without first issuing a separate opinion pursuant to the Supreme Court's order of remand. On May 21, 2020, the State of Louisiana, through the Office of the Attorney General, filed an Application for Rehearing and Motion to Vacate Remand Order for Lack of Jurisdiction, pointing out that this Court's May 14, 2020 issuance of an Order granting the defendant's Motion to Remand was premature due to the fact that the Supreme Court's judgment and mandate in this case had not yet been issued.

At this time, pursuant to the above-quoted judgment and mandate issued by the United States Supreme Court, we now consider defendant's conviction in light of the Supreme Court's decision in *Ramos*. For the following reasons, in light of the Supreme Court's decision in *Ramos*, we find that defendant is entitled to a new trial and accordingly vacate defendant's conviction and sentence and remand the matter to the trial court for further proceedings consistent with this opinion.²

ANALYSIS

The penalty for a conviction of second degree murder is found in La. R.S. 14:30.1, which provides that whoever commits the crime of second degree murder

² Additionally, we have separately considered and addressed the State of Louisiana's Application for Rehearing and Motion to Vacate Remand Order For Lack of Jurisdiction, and for the reasons stated therein and consistent herewith, we have granted the application for rehearing in part and denied the application for rehearing in part.

Considering that the United States Supreme Court has vacated the judgment in defendant's case because defendant was convicted of a "serious offense" by a non-unanimous jury verdict,⁴ and that the instant case is still pending on direct appeal,⁵ in compliance with the United States Supreme Court's directive in *Ramos*, we find that defendant is entitled to a new trial. Accordingly, in light of the Supreme Court's decision in *Ramos*, we vacate defendant's conviction and sentence and remand the matter to the trial court for further proceedings consistent with this opinion.⁶

CONCLUSION

For the foregoing reasons, defendant's conviction and sentence are vacated and the matter is remanded to the trial court for further proceedings consistent with this opinion.

CONVICTION AND SENTENCE VACATED; REMANDED

⁴ Although defendant did not specifically challenge the non-unanimous jury verdict by assignment of error in his appeal to this Court, the jury verdict is considered part of our errors patent review. Louisiana courts have repeatedly held that the jury verdict is discoverable in the pleadings and proceedings for purposes of errors patent review. See *State v. Craddock*, 307 So.2d 342 (La. 1975); *State v. Sanford*, 248 La. 630, 181 So.2d 50 (1965); *State v. Anderson*, 07-752 (La. App. 5 Cir. 2/6/08), 979 So.2d 566, 571. See also *State v. Acevedo*, 19-824 (La. 6/3/20), ---WL --- ("If the non-unanimous jury claim was not preserved for review in the trial court or was abandoned during any stage of the proceedings, the court of appeal should nonetheless consider the issue as part of its error patent review. See La. C.Cr.P. art. 920(2).")

⁵ A judgment becomes final on direct review when either: (1) the defendant fails to petition timely the United States Supreme Court for certiorari; or (2) that Court denies his petition for certiorari; and either (a) the defendant, having filed for and been denied certiorari, fails to petition the United States Supreme Court timely, under its prevailing rules, for rehearing of denial of certiorari; or (b) that Court denies his petition for rehearing. See *State v. Holliday*, 17-1921 (La. 1/29/20), 2020 WL 500475; *State v. Reed*, 14-1980 (La. 9/7/16), 200 So.3d 291, 338. Because the United States Supreme Court granted defendant's petition for certiorari, defendant's case is still pending on direct review.

⁶ See *State v. Myles*, 19-965 (La. App. 4 Cir. 4/29/20), --- So.3d ---, 2020 WL 2069885, where the Louisiana Fourth Circuit Court of Appeal recently vacated the defendant's conviction and sentence in light of *Ramos* and remanded the matter to the district court for further proceedings.

1300, *reconsideration not considered*, 16-1516 (La. 2/11/19), 263 So.3d 431, *cert. granted, judgment vacated by Victor v. Louisiana*, 19-5989, --- U.S. --- (2020), 2020 WL 1978934 (Mem.) (U.S. Apr. 27, 2020).

Following its opinion in *Ramos v. Louisiana*, on May 29, 2020, the United States Supreme Court issued the following judgment in this case:

To the Honorable the Judges of the Court of Appeal of Louisiana, Fifth Circuit.

GREETINGS:

Court of Appeal of Louisiana, Fifth Circuit case, STATE OF LOUISIANA, Appellee v. ERROL VICTOR, SR., Defendant-Appellant, No. 15-KA-339, was submitted to the **SUPREME COURT OF THE UNITED STATES** on the petition for writ of certiorari and the response thereto; and the Court having granted the petition.

It is ordered and adjudged on April 27, 2020, by this Court that the judgment of the above court in this cause is vacated, and the cause is remanded to the Court of Appeal of Louisiana, Fifth Circuit for further consideration in light of *Ramos v. Louisiana*, 590 U.S. ___ (2020).

THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and Laws of the United States.

Witness the Honorable **JOHN G. ROBERTS, JR.**, Chief Justice of the United States, the 27th day of April, in the year Two Thousand and Twenty.

Victor v. Louisiana, supra (judgment issued on May 29, 2020).

On May 29, 2020, the United States Supreme Court also issued the following mandate in this case:

ON PETITION FOR WRIT OF CERTIORARI to the Court of Appeal of Louisiana, Fifth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the motion of petitioner for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the above court in this cause is vacated, and the case is remanded to the Court of Appeal of Louisiana, Fifth