

STATE OF LOUISIANA

NO. 15-KA-339

VERSUS

FIFTH CIRCUIT

ERROL VICTOR, SR.

COURT OF APPEAL

STATE OF LOUISIANA

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

ORDER

Considering the remand of this matter to this Court from the United States Supreme Court by grant of certiorari on April 27, 2020, and the Motion to Remand filed in this Court by mover/defendant, Errol Victor, Sr., on May 1, 2020:

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, and his writ was denied by the Louisiana Supreme Court. On

Ex. "A"

April 27, 2020, the United States Supreme Court granted certiorari in *Victor v. Louisiana*, 19-5989, --- U.S. ---- (2020), 2020 WL 1978934 (Mem.) (U.S. Apr. 27, 2020), vacated defendant's judgment of conviction, and remanded the matter to this Court for further consideration in light of *Ramos v. Louisiana*, No. 18-5924, 590 U.S. ---- (2020), 2020 WL 1906545 (U.S. Apr. 20, 2020).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 1300, cert. granted, judgment vacated by *Victor v. Louisiana*, 19-5989, --- U.S. ---- (2020), 2020 WL 1978934 (Mem.) (U.S. Apr. 27, 2020).

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 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. 782.²

Non-unanimous jury verdicts were previously allowed under both La.

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.

² 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.

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.)

Id., slip op. at 7, 2020 WL 1906545 at *6.

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).

Considering that the United States Supreme Court has vacated defendant’s judgment of conviction because defendant was convicted of a “serious offense” by a non-unanimous jury verdict,³ and that the instant case

³ 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.

is still pending on direct appeal,⁴ in compliance with the United States Supreme Court's directive in *Ramos*, defendant is entitled to a new trial. Accordingly, the Motion to Remand filed in this Court by mover/defendant, Errol Victor, Sr., on May 1, 2020 is **HEREBY GRANTED**, and the matter is remanded to the trial court for further proceedings.⁵

Gretna, Louisiana, this 14th day of May, 2020.

JGG
SMC
MEJ

⁴ 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.

⁵ 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 and remanded the matter to the district court in light of *Ramos*.

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

DOCKET NUMBER: 15-KA-339

STATE OF LOUISIANA

versus

ERROL VICTOR, SR.

**APPEAL BY
ERROL VICTOR, SR. FROM THE JUDGMENT
OF THE 40TH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
DOCKET NUMBER 2010-CR-172, DIVISION "B"
THE HONORABLE MARY H. BECNEL PRESIDING**

MOTION FOR REMAND

Defendant/Appellant

Respectfully submitted,

**CLAIBORNE W. BROWN (25594)
1070-B West Causeway Approach
Mandeville, LA 70471
Telephone: (985) 845-2824
Facsimile: (985) 246-3099**

CRIMINAL PROCEEDING

NOW INTO COURT, through undersigned counsel, comes defendant/appellant, Errol Victor, Sr., and respectfully moves this Court to remand this matter to the 40th Judicial District Court to permit that Court to consider a motion to transfer this matter to Division “A” of the 40th Judicial District Court, a motion to vacate sentence, a motion for arrest of defendant’s August 1, 2014 judgment of conviction; and a motion to quash indictment, which motions have been filed contemporaneously therein with the filing of this Motion.

This matter comes to this Court on remand from the United States Supreme Court of the judgment of this Court in this matter, *State v. Victor*, 15-KA-339 (La. App. 5 Cir. 5/26/16), 195 So. 2d 128. On April 20, 2020, the United States Supreme Court ruled 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.” *Ramos v. Louisiana*, 18-5924, pp. 1, 7, (4/20/2020), 590 U.S. ____ (2020). At the time of this ruling, defendant herein, who, similar to the petitioner in *Ramos* had been convicted by a non unanimous jury, had a petition for certiorari pending with the United States Supreme Court. On April 27, 2020, the United States Supreme Court granted certiorari as to defendant’s petition, vacated the previous judgment of this Court and remanded “for further consideration in light of *Ramos*.” See 4/27/2020 Order List of the U.S. Supreme Court, attached hereto as Exhibit “A”.

The United States Supreme Court, by way of a concurrence of Justice Alito, noted that it was “not deciding or expressing a view on whether the question was properly raised below but instead leaving that question to be decided on remand.” *Id.* However, the United States Supreme Court case of *Griffith v. Kentucky*, 479 U.S. 314 (1987), provides that “[a] new rule for the conduct of criminal prosecutions applies retroactively to **all cases**, state or federal, pending on direct

review or not yet final, with no exceptions for cases in which the new rule constitutes a “clear break” with the past.” *Id.* at pp. 314, 328 (emphasis added). As such; the unquestionable status of defendant’s criminal prosecution as being on direct review at the time of the rendering of the decision in *Ramos v. Louisiana*, 590 U.S. ____ (2020) on April 20th effectively renders his non-unanimous jury verdict invalid, regardless of the status of whether the particular issue was properly raised before this Court on direct review (effectively rendering this Court’s review of that issue superfluous).

Given this reality, and in the interest of efficiency and judicial economy, defendant has filed contemporaneously with this Motion for Remand, the following motions with the 40th Judicial District Court: Motion to Transfer to Division “A”, Motion to Vacate Sentence, Motion for Arrest of Judgment, and Motion to Quash Indictment, attached hereto as Exhibit “B”. However, with the exception of the Motion to Vacate Sentence (though remand is requested for that purpose out of an abundance of caution), the 40th Judicial District Court is divested of jurisdiction to consider these motions due to the pending appeal as a result of the remand of this matter to this Court by the U.S. Supreme Court. *See* La. C. Cr. P. art. 916. As such, the remanding the matter to the 40th Judicial District Court would permit that Court to entertain these motions, would further the interest of efficiency and judicial economy and would potentially render the current appeal before this court moot.

WHEREFORE, claimant/appellant prays that this Court remand this matter to the 40th Judicial District Court to permit consideration of defendant's Motion to Transfer to Division "A", Motion to Vacate Sentence, Motion for Arrest of Judgment, and Motion to Quash Indictment, filed contemporaneously therein with the filing of this Motion.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Claiborne W. Brown', written over a horizontal line.

CLAIBORNE W. BROWN (25594)
1070-B West Causeway Approach
Mandeville, LA 70471
Telephone: (985) 845-2824
Facsimile: (985) 246-3199
cwbrown@cwbrownlaw.com

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the above and foregoing pleading on all counsel of record herein by mailing same by United States Mail, properly addressed and first class postage prepaid, on this 1st day of May, 2019.



CLAIBORNE W. BROWN (25594)
1070-B West Causeway Approach
Mandeville, LA 70471
Telephone: (985) 845-2824
Facsimile: (985) 246-3199
cwbrown@cwbrownlaw.com

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COURT OF APPEAL

STATE OF LOUISIANA

**ON APPEAL FROM THE JUDGMENT
OF THE 40TH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
DOCKET NUMBER 10-CR-172, DIVISION "B"
THE HONORABLE MARY H. BECNEL PRESIDING**

ORDER

Considering the foregoing Motion for Remand:

IT IS HEREBY ORDERED that this matter be **REMANDED** to the 40th Judicial District Court for the purpose of allowing that Court to consider defendant's Motion to Transfer to Division "A"; Motion to Vacate Sentence; Motion for Arrest of Judgment; and Motion to Quash Indictment.

ORDER READ, RENDERED AND SIGNED this _____ day of May, 2020 in Gretna, Louisiana.

SEE ORDER DATED 5/14/2020

JUDGE

JUDGE

JUDGE