

ELTON BURNETT, STATE OF LOUISIANA  
EX. REL.

NO. 21-KH-636

VERSUS


FIFTH CIRCUIT

TIM HOOPER, ET AL. LOUISIANA  
STATE PRISON

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL  
A TRUE COPY OF DOCUMENTS AS  
SAME APPEARS IN OUR RECORDS

  
Nancy F. Vega  
Chief Deputy, Clerk of Court

October 05, 2021

Nancy F. Vega  
Chief Deputy Clerk

**\*\*CONFIDENTIAL\*\***  
**LSA-RS 46:1844(W)**  
**ATTORNEYS OF RECORD**  
**ONLY**

IN RE ELTON BURNETT

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APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE STEPHEN C. GREFER, DIVISION "J", NUMBER 85-2291

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Panel composed of Judges Jude G. Gravois,  
Robert A. Chaisson, and Hans J. Liljeberg

### WRIT DENIED

Relator, Elton Burnett, seeks this Court's supervisory review of the trial court's May 24, 2021 ruling which denied his application for post-conviction relief.

On April 26, 2021, relator filed an application for post-conviction relief ("APCR"). Therein, relator appears to claim that the United States Supreme Court's decision in *Ramos v. Louisiana*, 590 U.S. --, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020), which held that a defendant who is tried for a serious crime has a right to a unanimous jury verdict, should be applied retroactively to vacate his conviction by a non-unanimous jury. Relator now seeks review of the trial court's May 24, 2021 ruling which denied his APCR on the basis that *Ramos* does not apply retroactively to cases on collateral review.<sup>1</sup>

*Ramos* explicitly applies only to cases pending on direct appeal and to future cases. 140 S.Ct. at 1407. And on May 17, 2021, the United States Supreme Court 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 noted, 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)).

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<sup>1</sup> In his writ application, relator mentions that he filed a motion for reconsideration of sentence after he received the ruling on his APCR, wherein he supposedly again sought application of *Ramos* to his case. This motion and the ruling thereon are not attached to relator's writ application and are thus not currently before us for review.

Relator was convicted in 1986.<sup>2</sup> At the time of relator's 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 well before *Ramos* was decided. *Edwards* holds that *Ramos* is not retroactive in cases on federal collateral review, and our 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.<sup>3</sup>

Accordingly, the trial court did not err in denying relator's APCR. Relator's writ application is denied.

Gretna, Louisiana, this 5th day of October, 2021.

**JGG**  
**RAC**  
**HJL**

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<sup>2</sup> Relator was convicted in 1986 of aggravated rape and was sentenced to life imprisonment at hard labor without the benefit of parole, probation or suspension of sentence. *See State v. Burnett*, 496 So.2d 1236 (La. App. 5<sup>th</sup> Cir. 1986).

<sup>3</sup> 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).

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT  
101 DERBIGNY STREET (70053)  
POST OFFICE BOX 489  
GRETNA, LOUISIANA 70054  
[www.fifthcircuit.org](http://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 **10/05/2021** 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-636**

**E-NOTIFIED**

24th Judicial District Court (Clerk)  
Honorable Stephen C. Grefer (DISTRICT JUDGE)  
Grant L. Willis (Respondent)                      Thomas J. Butler (Respondent)

**MAILED**

Elton Burnett #112558 (Relator)  
Louisiana State Penitentiary  
Angola, LA 70712