Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **5th day of May, 2023** are as follows:

BY McCallum, J.:

2022-K-00214 STATE OF LOUISIANA VS. KYRAN JAVON VAUGHN (Parish of St. Tammany)

REVERSED AND REMANDED. SEE OPINION.

Crichton, J., dissents for the reasons assigned by Justice Genovese and assigns additional reasons.
Genovese, J., dissents and assigns reasons.
Griffin, J., dissents for the reasons assigned by Justice Genovese.

SUPREME COURT OF LOUISIANA

No. 2022-K-00214

STATE OF LOUISIANA

VS.

KYRAN JAVON VAUGHN

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of St. Tammany

McCALLUM, J.

The United States Supreme Court, in *Ramos v. Louisian*a, 590 U.S. ——, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020), "held 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 and this requirement applies equally to state and federal criminal trials." *State v. Reddick*, 2021-01893, p. 2 (La. 10/21/22), 351 So. 3d 273, 274-75. As we noted in *Reddick*, *Ramos* only applies "to cases on direct review, pursuant to *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708 (1987)" and *State v. Cole*, 19-1733 (La. 10/6/20), 302 So. 3d 524. *Id*., 2021-01893, 351 So. 3d at 275. We found in *Cole* that, because the defendant's convictions were not final when *Ramos* was decided, the holding of *Ramos* applied. *Cole*, 19-1733, p. 1, 302 at 524. The implication of these cases is that, where a conviction is final, *Ramos* does not apply. Consistent with this principle, in *Reddick*, we declined to apply *Ramos* retroactively to the defendant as his case was on collateral, not direct review. We held that the new rule of criminal procedure announced in *Ramos*, requiring unanimity in jury verdicts, is not retroactive on state collateral review in Louisiana. *Reddick*, 2021-01893, p. 16, 351 So. 3d at 283.

The writ application in this case was granted to address a purely legal issue: where a defendant's convictions by a non-unanimous jury were final, but his

sentences were still under review at the time *Ramos* was decided, is the defendant entitled to a new trial? The answer to this question is determined by whether the matter would be considered to be on "direct review" as contemplated by *Reddick*.

After carefully reviewing this matter, we find that only the direct review of the non-unanimous jury conviction entitles a defendant to a new trial. Once that review is final, the defendant is not entitled to any further relief under *Ramos*, irrespective of whether his sentence or resentence is still on appeal. We explain our decision below.

In 2017, a St. Tammany Parish jury convicted the defendant of first degree robbery and obstruction of justice by 10-2 verdicts. The defendant was adjudicated a second-felony offender on the robbery charge and was sentenced to concurrent terms of 20 years imprisonment at hard labor and 10 years on obstruction of justice.[1] On appeal, the defendant raised numerous issues, including the sufficiency of the evidence and excessiveness of the sentence. All of these claims were rejected and the defendant's convictions and sentences were affirmed. *State v. Vaughn*, 18-0344 (La. App. 1 Cir. 9/24/18), 259 So. 3d 1048. This Court too affirmed the convictions, but vacated the habitual offender sentence and remanded the case to the trial court for resentencing in light of *State v. Lyles*, 19-0203 (La. 10/22/19), 286 So. 3d 407.[2] *See State v. Vaughn*, 2018-1750 (La. 11/25/19), 283 So. 3d 494. On August 31, 2020, the trial court resentenced defendant to an enhanced sentence of 18 years imprisonment at hard labor on the armed robbery charge.

The defendant then appealed from the newly imposed sentence, raising two assignments of error, only one of which was addressed by the court of appeal. In

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[1] Defendant had a previous conviction of simple kidnapping.

[2] *Lyles* held that amendments contained in 2017 La. Acts No. 282, § 2 (the Habitual Offender Law) apply to those defendants whose habitual offender bills were filed before November 1, 2017, and whose convictions became final after that date. The amendments reduced the sentencing range for habitual offenders.

that assigned error, the defendant argued that he was entitled to a new trial under *Ramos* because his case was pending on direct review as his resentencing was not final. In an unpublished opinion, the First Circuit agreed with the defendant and vacated both convictions, the habitual offender adjudication, and the sentences. *State v. Vaughn*, 2021-0521 (La. App. 1 Cir. 12/30/21) (unpub'd), --- So. 3d ----, 2021 WL 63116618.[3] Citing *Griffith*, the First Circuit reasoned that, because only the conviction was final, the defendant's case was still under direct review. From this ruling, the State filed a writ application seeking review with this Court.[4]

There can be no dispute that the defendant's convictions in this matter are final. We are guided by our decision in *State v. Lewis*, 350 So. 2d 1197 (La. 1977). There, the defendant's conviction was affirmed but his sentence was vacated, and the matter remanded for resentencing. After he was resentenced, the defendant appealed, raising issues concerning his conviction. While we observed that the defendant had a "right to appeal from the imposition of the new sentence," we refused to address any issue concerning his conviction. *Id*., 350 So. 2d at 1198. We found that the "defendant's conviction had already been affirmed and the judgment therein was final fourteen days after its rendition upon the failure of defendant to file an application for a rehearing." *Id*.

Our long-standing analysis in *Lewis* is consistent with the *Griffith* Court's later pronouncement regarding the finality of a defendant's conviction. The *Griffith* Court explained: "[b]y 'final,' we mean a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied." *Griffith*, 479 U.S. at 321 n.6, 107 S.Ct. at 712.

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[3] This ruling rendered the defendant's second assignment of error – the excessiveness of his sentence – moot.

[4] Writ granted. *See State v. Vaughn*, 2022-00214, 338 So. 3d 479 (La. 6/1/22).

The record reflects that the defendant's convictions and sentence were affirmed by the First Circuit in 2018. *See Vaughn*, 18-0344, 259 So. 3d 1048. Although this Court later vacated the sentence and remanded for resentencing, all other requested relief was denied. *See Vaughn*, 2018-1750, 283 So. 3d 494. No rehearing was requested. Consequently, the defendant's convictions unequivocally became final on December 9, 2019. *See* La. C.Cr.P. art. 922; *Lewis*.

The defendant does not argue that his convictions are not final. Rather, he maintains that his "case" was on direct review at the time that *Ramos* was decided because his resentencing was pending. We disagree. The *Ramos* decision hinged on the unconstitutionality of a defendant's *conviction* by a non-unanimous jury. That a defendant's sentence is not final does not affect the finality of his conviction. Nor does a case remain on direct review for purposes of *Ramos* when the only unresolved issue is a defendant's sentence; the lack of a final sentence does not return a conviction to the direct review process.

Our decision is amply supported by other decisions addressing this issue, either directly or analogously. *State v. Kennon*, 2019-00998, p. 7 (La. 9/1/20), 340 So. 3d 881, 886, for example, involved the finality of a conviction on subsequent appeal of a habitual offender resentencing; the issue focused on whether the defendant could be resentenced under the amended habitual offender statute, which reduced the range of penalties. The defendant maintained that he was entitled to be sentenced under the new range because his conviction was not yet final; appellate review of the habitual offender sentence was still pending at the time the new law went into effect. Rejecting this argument, the Court stated:

> To accept defendant's view that his conviction does not become final until his habitual offender adjudication and sentence become final, despite the fact that appellate review of his conviction has been completed, would require the court to read "offenders whose convictions became final on or after November 1, 2017," in Section 2 of Act 282 as "offenders whose convictions and sentences

> became final" instead. Just as we were bound by this unequivocal language in *Lyles* to find that defendant was entitled to be sentenced under La.R.S. 15:529.1 as amended by 2017 La. Acts 282, we are bound by it here to find this defendant is not.
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> While the situation here is complicated by the bifurcated appeals that resulted from the State's decision to pursue recidivist sentence enhancement during the pendency of the first appeal, we think it sufficient to find *Lyles* does not apply here because a conviction is a conviction, while this court has consistently found a habitual offender proceeding is "merely part of sentencing." *State v. Langendorfer*, 389 So.2d 1271, 1276-77 (La. 1980). It is well-settled that, "A defendant is not convicted of being a habitual offender. Rather, a defendant is adjudicated as a habitual offender as a result of prior felony convictions. The sentence to be imposed following a habitual offender adjudication is simply an enhanced penalty for the underlying conviction." *State v. Parker*, 03-0924, p. 15 (La. 4/14/04), 871 So.2d 317, 325-326. The only appellate review ongoing here pertains to defendant's habitual offender sentence. ***Direct review*** *of the conviction itself ceased before November 1, 2017* [the date on which new habitual offender statute went into effect].

Id., 2019-00998, pp. 8-9, 340 So. 3d at 887. (Emphasis added).

Other cases likewise reinforce a finding that, once a defendant's conviction is final, his case is no longer considered to be on direct review. *See State v. Sylvester*, 21-441, p. 4 (La. App. 3 Cir. 12/15/21), 330 So. 3d 1139, 1143-44, *writ denied*, 22-104 (La. 4/26/22), 336 So. 3d 893 ("Although this court vacated [defendant's] habitual offender sentence [after his conviction was affirmed and writs were denied], this did not change the finality of his affirmed conviction. . . [Defendant's] appeal of his new sentence following the vacated habitual offender sentence does not open the door for relitigation of any issues regarding his initial conviction. [Defendant's] conviction remains final and therefore, he is not entitled to relief under *Ramos*."); *See also*, *State v. Sewell*, 53,571 (La. App. 2 Cir. 11/18/20), 307 So. 3d 362, 369, *writ denied*, 2020-01457 (La. 4/12/22), 336 So. 3d 91 ("*Ramos* applies only to matters currently pending on direct review. In the instant case, Sewell's conviction

became final in 2003, after the state supreme court denied his challenge of this Court's 2002 opinion. . . As such, it is Sewell's resentencing that was pending on direct review when *Ramos* was decided, not Sewell's conviction, which remained final"); *State v. Brown*, 19-370, p. 11 (La. App. 5 Cir. 1/15/20), 289 So. 3d 1179, 1187, *writ denied*, 2020-00276 (La. 6/22/20), 297 So. 3d 721(Johnson, C.J., concurring) (". . . [the defendant's] convictions and sentences became final [when this Court denied writs]. *See* La. C.Cr.P. art. 922(D). Although Mr. Brown was resentenced pursuant to *Miller* [*v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012)], and now legitimately exercises his right to appeal that resentencing, his resentencing does not allow him the opportunity to challenge his previously affirmed convictions . . . ."); *State v. Jarvis*, 2021-1181, n.9 (La. App. 1 Cir. 2/25/22), 340 So. 3d 1137, 1141 ("the defendant's convictions herein became final in 2002, long before the United States Supreme Court's decision in *Ramos*. The defendant's 2021 habitual offender adjudication and resentencing entitled him to an appeal of his new habitual offender adjudication and resentencing, not the underlying convictions.").[5]

Based on the foregoing, we hold that, once a conviction has become final, a case is no longer on direct review for purposes of *Ramos* and *Reddick*. Again, it is the fact of a non-unanimous jury conviction that entitles a defendant to a new trial under *Ramos*, not any other procedural defect. It follows, therefore, that a case is not considered to be on direct review when the only matter remaining is an appeal of a resentence. The finality of a defendant's conviction forecloses any right to a new trial under these circumstances.

[5] We granted writs in *Jarvis* solely to vacate the habitual offender adjudication and sentence, and remanded the case to the trial court to conduct a new habitual offender adjudication. *State v. Jarvis*, 2020-00877 (La. 1/12/21), 308 So. 3d 290, 291.

Accordingly, the judgment of the court of appeal is reversed and vacated. The matter is remanded to the court of appeal for consideration of the defendant's remaining assignment of error.

REVERSED AND REMANDED

SUPREME COURT OF LOUISIANA

No. 2022-K-00214

STATE OF LOUISIANA

VS.

KYRAN JAVON VAUGHN

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF ST. TAMMANY

Crichton, J., dissents, for the reasons assigned by Justice Genovese, and assigns additional reasons.

I dissent from the majority and would affirm the court of appeal, finding that this case was pending on direct review when *Ramos v. Louisiana*, 590 U.S. -- (2020) ("*Ramos*") was decided, and therefore finding that defendant Kyran Javon Vaughn is entitled to the constitutional relief granted under *Ramos*.

In my view, this case can be resolved by beginning at the place where our analysis should always begin—the plain language of our code and statutes. The Code of Criminal Procedure presents two options for the review of a criminal conviction: direct appeal, pursuant to La. C.Cr.P. art. 911, *et seq.*, and collateral review, *i.e.*, post-conviction proceedings, pursuant to La. C.Cr.P. art. 924, *et seq*. Our legislature has pronounced no other options; the Code offers no middle ground in which a case could languish.

Code of Criminal Procedure article 930.8 provides that no application for post-conviction relief "shall be considered if it is filed more than two years after ***the judgment of conviction and sentence has become final***." (Emphasis added.) This Court vacated defendant's sentence while it was on direct appellate review. *State v. Vaughn*, 18-1750 (La. 6 11/25/19), 283 So. 3d 494. Therefore, because his sentence

was not yet final, he was not eligible—and had never become eligible[1]—to apply for post-conviction relief under article 930.8. His case, however, must have been ***somewhere*** in the state's procedural process. In my view, because defendant was not eligible for post-conviction relief, his case was not on collateral review and must have been on direct review. Moreover, the United States Supreme Court has instructed that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review. *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). I believe that the *Griffith* ruling, read in context with the Code of Criminal Procedure created by our Legislature, suffices to answer the question.

I would therefore affirm the court of appeal and permit defendant to be afforded relief under *Ramos*.

[1] Importantly to my conclusion, the defendant in this case never entered the collateral review process, as without the finality of the sentence, his case remained on direct review. In contrast, and as explained in my colleague Justice Genovese's dissent, in the cases cited by the majority, the defendants had already entered the collateral review track when resentencing occurred.

SUPREME COURT OF LOUISIANA

No. 2022-K-00214

STATE OF LOUISIANA

VS.

KYRAN JAVON VAUGHN

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of St. Tammany

GENOVESE, J. dissents for the following reasons:

I respectfully dissent and would affirm the appellate court's judgment, which held that Defendant's case was pending on direct review at the time *Ramos v. Louisiana*, 590 U.S.___, 140 S.Ct. 1390 (2020)("*Ramos*") was decided.

In *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 716 (1987) (emphasis added), the United State Supreme Court held: "[A] new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, *pending on direct review or not yet final* . . . ." In *State v. Naquin*, 00-0291, p. 2 (La. 9/29/00), 769 So.2d 1170, 1171 (citing *Griffith*, 479 U.S. at 323), this Court held, in pertinent part: "New rules of constitutional criminal procedure apply retroactively to all cases subject to direct appeal at the time the new rule is announced." The narrow question, in the context of the application of *Ramos*, is whether Defendant's case was pending on direct review when *Ramos* was decided.[1]

The procedural history of this case is crucial in answering this question. As set forth in the majority opinion, Defendant, by 10-2 verdicts, was convicted of first degree robbery and obstruction of justice. He was adjudicated a second-felony offender on the robbery charge and was sentenced to concurrent terms of 20 years imprisonment at hard labor and 10 years imprisonment at hard labor on obstruction

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[1] *State v. Cohen*, 19-00949 (La. 1/27/21), 315 So.3d 202.

of justice. The appellate court in *State v. Vaughn,* 18-0344 (La. App. 1 Cir. 9/24/18), 259 So.3d 1048, affirmed his convictions and sentences. On review by this Court, Defendant's convictions were affirmed, but his habitual offender sentence was vacated, and the case remanded to the trial court for resentencing in light of *State v. Lyles*, 19-0203 (La. 10/22/19), 286 So.3d 407. *State v. Vaughn*, 18-1750 (La. 11/25/19), 283 So.3d 494. *Ramos* was decided on April 20, 2020, *before* Defendant was resentenced. On August 31, 2020, the trial court sentenced Defendant to an enhanced sentence of 18 years imprisonment at hard labor on the robbery charge. At no time before *Ramos* was decided did Defendant become eligible to seek state collateral review.

The majority agrees with the State's argument that the finality date of a defendant's conviction is the only date of importance in evaluating whether a defendant is entitled to relief under *Ramos,* and Defendant's case was final before *Ramos* was decided, *i.e.*, when his conviction became final on December 9, 2019.

In opposition, Defendant argues that this Court's affirmation of his conviction and remand for resentencing in *Vaughn*, 283 So.3d 494, left his judgment incomplete. Defendant asserts that before resentencing, he did not have a final judgment from, which to appeal, nor could he seek post-conviction relief. Defendant pertinently contends: "There is no break in this case. And because there is no break, [Defendant's] case remains in the appellate posture rather than the post-conviction stage, which only applies to a final conviction and sentence." Thus, his case was still on direct review when *Ramos* was decided.

I find Defendant's claim has merit and reject the majority's pronouncement of a new jurisprudentially-created rule that once a conviction becomes final, a case is no longer to be considered on direct review. In my view, the implication of the statutory authority is that a case remains on direct review until a defendant's

conviction and sentence become final, and the defendant is eligible for state collateral review.

Under Louisiana law, there are two general procedural vehicles relevant to the present case whereby Defendant may seek relief—on direct review (appeal) and state collateral review (post-conviction relief). Louisiana Code of Criminal Procedure Article 912 provides, in pertinent part: "Only a final judgment or ruling is appealable[,]" and "[t]he judgments or rulings from which the defendant may appeal include, but are not limited to: (1) A judgment which imposes sentence. . . ."[2] No appeal lies from a conviction only, as no direct review or appeal lay in criminal cases except "when a sentence of a certain severity has been actually imposed." *State v. Brown*, 27 La. Ann. 236, 237 (La. 1875)(citing *State v. Welsh*, 23 La. Ann. 142 (La. 1871). In contrast, a defendant may not seek state collateral review or post conviction relief if "the petitioner may appeal the conviction and sentence which he seeks to challenge, or if an appeal is pending." La. C.Cr. P. art. 924.1. Louisiana Code of Criminal Procedure Article 930.8(A) provides in pertinent part: "No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922 . . . ."

Additionally, the cases relied on by the State and the majority are distinguishable. In *State v. Kennon*, 19-998 (La. 9/1/20), 340 So.3d 881, *Ramos* was not at issue; rather, one of the issues was whether the defendant was eligible for a lesser sentence under La. R.S. 15:529.1 as amended by 2017 La. Acts 282. The defendant argued he should be sentenced under the amendment because his appeal

[2] The Editor's comment (c) to La. C.Cr.P. art. 912 states in part: "The Louisiana Supreme Court has ruled that an appeal cannot be taken by the defendant except from a conviction and sentence. *State v. Carrerot*, 133 La. 487, 63 So. 599 (1913); *State O'Neal*, 138 La. 977, 70 So. 1011 (1916); *State v. Fried*, 152 La. 710, 94 So. 327 (1922); *State v. LeBlanc*, 160 La. 1053, 108 So. 87 (1926)."

was not yet final until after November 1, 2017 (the effective date), because appellate review of the habitual offender sentence was ongoing. This Court rejected the argument and held the plain language of 2017 La. Acts 282—"shall become effective November 1, 2017, and shall have prospective application only to offenders whose convictions became final on or after November 1, 2017"—to mean when the conviction became final. *Kennon*, 19-998, p. 7, 340 So.3d at 886. Such limiting language was not used in *Griffith*, 479 U.S. at 328 ("[A] new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final . . . .").

In *State v. Brown*, 19-370 (La. App. 5 Cir. 1/15/20), 289 So.3d 1179, *writ denied*, 20-276 (La. 6/22/20), 297 So.3d 721, *cert. denied*, ___ U.S.___, 141 S.Ct. 1396 (2021), *State v. Sewell*, 53,571 (La. App. 2 Cir. 11/18/20), 307 So.3d 362, *writ denied*, 20-1457 (La. 4/12/22), 336 So.3d 91, and *State v. Jarvis*, 21-1181 (La. App. 1 Cir. 2/25/22), 340 So.3d 1137[3], each defendant was convicted; his sentence imposed; the initial appellate review of the conviction and sentence was final; he was eligible to seek state collateral review before *Ramos* was rendered; and, there was an intervening principle of law or the State was seeking enhancement, which resulted in resentencing.[4] Unlike the above cases, at the time *Ramos* was decided, Defendant's sentence from his initial appeal was not yet final, and he was not eligible to seek state collateral review.

Although *State v. Lewis*, 350 So.2d 1197 (La. 1977),[5] is procedurally similar, it does not lend guidance as to the meaning of direct review as contemplated by *Griffith*, 479 U.S. 314. Additionally, I submit a determination that a case remains

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[3] This case was reviewed pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), which was expanded by this Court in *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241.

[4] *State v. Sylvester*, 21-441 (La. App. 3 Cir. 12/15/21), 330 So.3d 1139, *writ denied*, 22-104 (La. 4/26/22), 336 So.3d 893, cited by the majority, does not lend much guidance to the issue due to its unusual procedural history.

[5] *Lewis*, 350 So.2d 1197, was decided before *Griffith,* 479 U.S. 314.

on direct review until a defendant's conviction and sentence becomes final, and the defendant is eligible for state collateral review would not change this Court's pronouncement in *Lewis* that a defendant awaiting resentencing after his conviction is final, is relegated to post conviction relief once his resentencing becomes final.[6]

Based on the above, I submit a case remains on direct review until a defendant's initial appeal of his conviction and sentence becomes final, and the defendant is eligible for state collateral review. Applying this principle to the particular factual and procedural history in this case, I agree with the appellate court that Defendant's case was pending on direct review when *Ramos* was rendered, and Defendant should be afforded the constitutional relief granted under *Ramos*. As a result thereby, I would affirm the appellate court's decision.

[6] In *Lewis*, the defendant's conviction was affirmed, but his sentence was vacated and set aside, and the case was remanded to the trial court for resentencing. Following resentencing, the defendant appealed, and he raised assignments of error concerning both his conviction and his sentence. This Court did not consider the assignments of error relating to his conviction. *Lewis*, 350 So.2d 1197. This Court held that the defendant's conviction had been affirmed, and the judgment was final fourteen days after its rendition upon the failure of the defendant to file an application for a rehearing, citing La. C.Cr.P. art. 922. This Court stated that any additional issues the defendant wanted to raise in connection with his conviction, including an argument relative to ineffective assistance of counsel, must be brought to the attention of the courts by application for writs of habeas corpus (state collateral review). *Lewis*, 350 So.2d 1197.