

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL, THIRD CIRCUIT

20-441

STATE OF LOUISIANA

VERSUS

CECIL EARL PHILLIPS, JR.

**APPEAL FROM THE
NINTH JUDICIAL DISTRICT COURT
PARISH OF RAPIDES, NO. 336-589
HONORABLE MARY LAUVE DOGGETT, DISTRICT JUDGE**

**D. KENT SAVOIE
JUDGE**

Court composed of Elizabeth A. Pickett, D. Kent Savoie, and Jonathan W. Perry,
Judges.

APPEAL DISMISSED.

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Savoie, Judge.

On September 19, 2019, a jury convicted Defendant, Cecil Earl Phillips, Jr., of second degree rape, in violation of La.R.S. 14:42.1; two counts of domestic abuse battery, in violation of La.R.S. 14:35.3; and aggravated assault, in violation of La.R.S. 14:37. On January 23, 2020, Defendant was sentenced as follows: fifteen years, the first two of which are to be served without benefit of probation, parole, and suspension of sentence, at hard labor for second degree rape; six months in parish prison, the first forty-eight hours to be served without benefit of probation and parole, and a fine of \$300 for each count of domestic abuse battery; and six months in parish prison for aggravated assault. The sentences were ordered to be served concurrently.

On May 1, 2020, Defendant filed a “Motion for New Trial” based on *Ramos v. Louisiana*, ___ U.S. ___, 140 S.Ct. 1390 (2020), which determined that non-unanimous verdicts are not permissible under the Sixth Amendment to the Constitution and said prohibition applies to the states through the Fourteenth Amendment. A hearing was held on the “Motion for New Trial” on May 26, 2020. The trial court vacated the convictions on the two counts of domestic abuse battery and second degree rape and granted a new trial as the jury’s verdicts on those convictions were non-unanimous.

The State of Louisiana filed a “Notice of Appeal” on June 8, 2020, regarding the trial court’s grant of Defendant’s “Motion for New Trial” on the two counts of domestic abuse battery and second degree rape. On August 19, 2020, this court ordered the State to show cause why the appeal in this case should not be dismissed as the judgment at issue is not an appealable judgment. On October 5, 2020, the State filed a response to the rule to show cause asserting the State should have filed

a notice of intent to seek writs rather than a “Notice of Appeal” and requesting this Court to convert the appeal to an application for supervisory writs.

This Court does not convert appeals into applications for supervisory writs. Therefore, the appeal is dismissed. However, the State has filed an application for supervisory writs with this court, which has been assigned docket no. 20-438.

APPEAL DISMISSED.

This opinion is NOT DESIGNATED FOR PUBLICATION.
Uniform Rules—Courts of Appeal, Rule 2-16.3