

Judgment rendered July 1, 2020
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

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ON REMAND

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No. 53,166-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

JEROME RICHARDSON

Appellant

* * * * *

On Remand from the
Louisiana Supreme Court

Originally Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 344,586

Honorable Charles Gordon Tutt, Judge

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LOUISIANA APPELLATE PROJECT
By: Sherry Watters

Counsel for Appellant

JEROME RICHARDSON

Pro Se

JAMES E. STEWART, SR.
District Attorney

Counsel for Appellee

KODIE K. SMITH
WILLIAM C. GASKINS
CHARLES K. PARR
Assistant District Attorneys

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Before STONE, COX, and STEPHENS, JJ.

COX, J.

The instant matter comes before this Court on remand from the Louisiana Supreme Court. The defendant, Jerome Richardson, was convicted by a non-unanimous jury of first degree rape and sentenced to the mandated term of life imprisonment, without benefits. In light of the United States Supreme Court's ruling in *Ramos v. Louisiana*, __ U.S. __, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), and the fact that this matter is on direct appeal, the defendant's conviction and sentence must be vacated. The defendant is entitled to a new trial.

In *State v. Ramos*, 2016-1199 (La. App. 4 Cir. 11/2/17), 231 So. 3d 44, *writs denied*, 2017-2133 (La. 6/15/18), 257 So. 3d 679, 2017-1177 (La. 10/15/18), 253 So. 3d 1300, the defendant was convicted of second degree murder by a vote of 10-2. The murder was committed in 2014; he was found guilty in 2016. The defendant appealed his conviction, arguing that the trial court erred in denying his motion to require a unanimous jury verdict. He asserted that La. C. Cr. P. art. 782 violates the Equal Protection Clause contained in the Fourteenth Amendment of the United States Constitution and Louisiana's statutory scheme permitting non-unanimous jury verdicts in noncapital felony cases should be declared unconstitutional. The court upheld the constitutionality of Article 782, finding that under current jurisprudence from the U.S. Supreme Court, non-unanimous 12-person jury verdicts are constitutional. The court noted that in *State v. Bertrand*, 2008-2215 (La. 3/17/09), 6 So. 3d 738, the Louisiana Supreme Court reversed the trial court's finding that La. C. Cr. P. art. 782(A) violated the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, relative to the number of jurors

needed to concur to render a verdict in cases in which punishment is necessarily confinement at hard labor.

The United States Supreme Court granted *certiorari* in *Ramos v. Louisiana*, ___ U.S. ___, 139 S. Ct. 1318, 203 L. Ed. 2d 563 (2019), to determine whether the Fourteenth Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict. On April 20, 2020, while the defendant's appeal was pending before the Louisiana Supreme Court, the United States Supreme Court held that the Sixth Amendment right to a jury trial, as incorporated by the 14th Amendment, requires a unanimous verdict to convict a defendant of a serious offense in both federal and state courts. The Court concluded, "There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal trials equally...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." *Ramos v. Louisiana, supra*. Thus, according to *Ramos*, Louisiana will have to retry defendants who were convicted of serious offenses by non-unanimous juries and whose cases are still pending on direct appeal.¹

¹ We further note that an amendment to Louisiana Constitution art. I, § 17 was approved by voters in a statewide election in November 2018. That section now provides, in pertinent part:

A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. 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. 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[.]

Likewise, the Legislature amended La. C. Cr. P. art. 782(A) in 2018, to provide in pertinent part:

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

In the instant case, as stated above, the jury was not unanimous in finding the defendant guilty of the serious offense of first degree rape. The jury was polled, revealing a vote of 10-2. In addition, we note that even if the issue was not preserved by the defendant for appellate review, this error is patent on the face of the record. *State v. Richardson*, 2020-00175 (La. 6/3/20), 2020 WL 3424936. Accordingly, in light of the United States Supreme Court's ruling in *Ramos v. Louisiana*, *supra*, and the fact that this matter is on direct appeal, we reverse the defendant's conviction for first degree rape. The life sentence imposed for that offense is hereby vacated. The defendant is entitled to a new trial.

DECREE

For the foregoing reasons, the defendant is entitled to a new trial. The defendant's conviction is reversed and the sentence is hereby vacated. The matter is remanded to the trial court for further proceedings.

**CONVICTION REVERSED; SENTENCE VACATED;
REMANDED.**

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.