

January 2024

Dear Readers,

It's time to replace old, stale postings with new ones. Those who've followed this website know Oregon has housed me out-of-state since 1987. Since then, I've had no access to Oregon Law Books and I've been unable to network with other Oregon inmates about new Laws and Appellate Court cases that would assist my fight for justice.

So! It was quite by accident I happened across scores of Oregon convictions being reversed because they were based on nonunanimous (10-2) jury verdicts.

That's exactly what happened in my case.

The jury voted 12-0 to convict on Count 1; but they voted 10-2 to convict on Counts 2-5. Two jurors voted to acquit me of four of the charges against me.

The State of Oregon failed to prove its case against the accused beyond a reasonable doubt. Two jurors voted to acquit, but Lane County Oregon still sentenced me to 50 years on the four counts in question.

This is what the United States Supreme Court had to say about Oregon in Ramos v Louisiana, 140 Sct 1390 (2020). On page 1391, the Court wrote:

"In 48 States and federal courts, a single juror's vote to acquit is enough to prevent a conviction. But

two States, Louisiana and Oregon, have long punished people based on 10-2 verdicts".

In fact, I learned, by reading the Court Justice's opinion in Ramos, that Oregon Legislators amended the Law in the 1930s to allow nonunanimous jury verdicts to convict in order to swing jury conviction in the State's favor, with no regard for the accused person's Constitutional Right to a fair trial.

I had no idea this had happened and the nonunanimous jury verdict (10-2) was NOT what our Founding Fathers fought for when they broke away from the tyrann of their former countries.

In 2020, the US Supreme Court reversed the Unconstitutional nonunanimous jury verdicts. Oregon Appellate Courts did the same (with the support of the State Attorney General). They reversed the convictions in scores of cases and remanded the prisoners back to their County of Commitment for resentencing on the Counts which were decided by unanimous vote.

In my case that would be Count 1. Lane County would have the option to re-try me on Counts 2-5 if they want, but the Final Judgment in Oregon v Downs, Lane County Case Number: 10-84-01377 would Sentence me for only Count 1.

That aregument is what is before the Marion County Oregon Court at this time. That's what you're going to be reading in this posting.

STATE OF OREGON
COUNTY OF MARION

copy
FVI

Elizabeth Diane Downs,
Petitioner

Case Number:

V

Mike Reese, Director
Oregon Department
of Corrections,
Defendant

Petition for Post-Conviction Relief

Comes now Petitioner, Elizabeth Diane Downs, seeking relief from wrongful conviction pursuant to ORS 138.530:

(1) Post-conviction relief pursuant to ORS 138.510 – 138.680 shall be granted by the court when ...

(d) Unconstitutionality of the statute making criminal the acts for which petitioner was convicted.

Petitioner was found guilty by nonunanimous jury verdicts. The trial court accepted the mixed verdicts: Count 1 was 12-0; Counts 2 through 5 were 10-2 (Appendix 1).

The United States Supreme Court recently reversed the practice of imprisoning United States Citizens by reason of nonunanimous jury verdicts.

Ramos v Louisiana, 140 S. Ct. 1390 (2020).

After the Ramos decision was handed down, the Oregon Supreme Court decided a new trial would be required to cure Constitutional errors in Oregon cases infected by nonunanimous jury verdicts.

Oregon v Ulery, 366 Or 500; 464 P3d 1123 (2020)

“In 1934, Article 1, section 11, of the Oregon Constitution was amended to permit ‘ten members of the jury’ to ‘render a verdict of guilty or not guilty, save except a verdict of guilty of first degree murder’. Since then, Oregon courts have routinely received guilty verdicts by a vote of 10 to two or 11 to one. The United States Supreme Court upheld that outlier practice in Apodaca v Oregon, 406 US 404; 92 S.Ct. 1628; 32 L Ed 2d 184 (1972), but defendants have continued to object, arguing that Apodaca was infirm. In Ramos v Louisiana, ___ US ___; 140 S. Ct. 1390; 206 L Ed d 583 (2020), the United States Supreme Court agreed, overruling Apodaca; concluding that the jury trial guarantee of the Sixth Amendment to the United States Constitution includes ‘a right to a unanimous verdict’ id at 1402; and holding that that right is incorporated into and made applicable to the states through the Due Process Clause of the Fourteenth Amendment, id at 1397 ... After Ramos issued, the state [in Ulery] conceded that, because defendant’s convictions were based on nonunanimous verdicts, they could not be sustained in light of the Supreme Court’s holding in Ramos. The state also conceded ... we should reverse defendant’s convictions and remand for a new trial”.

The Oregon Supreme Court also addressed the issue regarding the fact defense attorneys failed to object to the Court’s jury instructions permitting nonunanimous guilty verdicts.

Oregon v Williams, 366 Or 495; 466 P3d 55 (2020)

“In light of Ramos, the state concedes that defendant’s Sixth Amendment challenge to his conviction meets the requirements for plain error review and that his conviction should be reversed if this court exercises its discretion to review the error. We accept the state’s concession and exercise our discretion to review defendant’s Sixth Amendment challenge, even though defendant failed to raise that argument in the trial court ... We have recognized that an intervening ‘authoritative ruling of the United States Supreme Court can be relevant to a determination of good cause State v Hagberg, 347 Or 272, 276; 220 P3d 47 (2009). The Ramos decision transformed an assignment of error to a trial court ruling permitting a nonunanimous verdict from one that has been rejected repeatedly by Oregon appellate courts into one with merit. Thus, the timing of the Ramos decision makes a difference in this case, and defendant’s omission of the Sixth Amendment issue in his opening brief in the Court of Appeals was understandable ... For the reasons given in Ulery, we accept the state’s concession that the issue meets the requirements for plain error review, and we exercise our discretion to correct the error. We therefore reverse defendant’s conviction.”

Oregon v Kincheloe, 367 Or 335; 478 P3d 507 (2020)

“In this case, we again address the application of the United States Supreme court’s decision in Ramos v Louisiana, which held that the Sixth Amendment requires a jury to be unanimous in order to convict a defendant of a serious offense. Defendant was charged with several offenses ... [T]he jury had unanimously convicted defendant [on 2 counts] but was divided eleven to one on the [third] count ... The state concedes that defendant’s single conviction based on a nonunanimous verdict must be reversed ... As to the defendant’s nonunanimous conviction for first-degree rape, we would reverse that conviction even if defendant had failed to preserve an objection ... we reverse defendant’s conviction”.

Having settled that matter, the Oregon Court of Appeals turned to the issue of mixed verdicts, as in Petitioner’s case.

Oregon v Ramos, 367 Or 22; 478 P3d 515 (2020)

“This case presents a different issue: After being instructed that it could convict a defendant by a vote of 10 to two, the jury found defendant guilty of five crimes, four by unanimous verdicts and one by a nonunanimous verdict. Under Ramos and Ulery, the one conviction based on a nonunanimous verdict must be reversed”.

The Oregon Ramos decision was followed by:

Oregon v Avdeyev, 309 Or App 205; 482 P3d 115 (2021)

“On all but two counts ... the jury returned a nonunanimous verdict ... The state concedes that defendant is entitled to reversal on the nonunanimous counts under Ramos v Louisiana ... We agree, accept the concessions, and reverse and remand the convictions that are based on nonunanimous verdicts”.

Oregon v Sosna, 309 Or App 403; 481 P3d 1033 (2021)

“The jury’s verdict on Count 1 was 11-1; on the other counts, the jury was unanimous ... the state concedes that defendant’s conviction based on a nonunanimous verdict (Count 1) must be reversed in light of Ramos v Louisiana ... We agree and accept the concession, and we exercise our discretion to correct the error for the reasons set forth in State v Ulery ... Convictions on Count 1 reversed and remanded; remanded for resentencing; otherwise affirmed”.

Oregon v Borrego, 310 Or App 578; 485 P3d 307 (2021)

Oregon v Damber, 311 Or App 322; 489 P3d 553 (2021)

Oregon v Davis, 312 Or App 464; 488 P3d 836 (2021)

“Defendant was convicted by nonunanimous jury verdicts ... He was also convicted by unanimous jury verdicts ... [T]he state concedes that the trial court erred by instructing the jury that it could return a nonunanimous verdict and by accepting nonunanimous verdicts on Counts 1 and 4 ... We agree with the state and accept its concession as to Counts 1 and 4 ... Convictions on Counts 1 and 4 reversed and remanded; remanded for resentencing”.

Oregon v Harrison, 314 Or App 118; 493 P3d 577 (2021)

“The jury returned a 10-2 verdict on Count 1 and unanimous verdicts on Count 2 ... The state concedes that the trial court erred in giving a nonunanimous jury instruction and in accepting the jury’s nonunanimous verdict on Count 1, necessitating reversal and remand of defendant’s conviction on Count 1 only. We agree with and accept the state’s concession”.

Oregon v Hoppe, 317 Or App 72; 501 P3d 559 (2021)

Oregon v Pitcher, 317 Or App 269; 504 P3d 701 (2022)

Oregon v Bock, 310 Or App 360; 484 P3d 403 (2022)

Oregon v Schuster, 320 Or App 260; 512 P3d 474 (2022)

Petitioner's case not only contained mixed verdicts. The Trial Court merged several counts. The Oregon Court of Appeals also settled this matter.

Oregon v Courier, 309 Or App 334; 481 P3d 439 (2021)

"Defendant was found guilty by a jury verdict on [14 counts]. The trial court merged the verdicts on [numerous counts]. The verdicts on Counts 12 through 14 were unanimous; the other verdicts were not unanimous .. The state concedes that defendant's convictions based on the nonunanimous verdicts must be reversed in light of Ramos v Louisiana ... We agree and accept that concession".

Lest Defendant argue Petitioner cannot seek Post-Conviction Relief for Constitutional errors made before Ramos v Louisiana was decided, Petitioner offers the following Oregon decisions.

Watkins v Ackley, 370 Or 604, 606; 523 P3d 86, 88 (2022)

"Today, we consider the effect of Ramos in a case that comes to us in a different posture: an appeal from the trial court's rejection of a post-conviction petitioner's challenge to convictions that were obtained through nonunanimous verdicts ... [W]e now hold that, when a petitioner seeks post-conviction relief, on Sixth Amendment grounds, from a judgment of conviction which was based on a nonunanimous verdict and which became final before the Supreme Court's Ramos decision issued, the petitioner is entitled to relief ... That is so because convicting a defendant on a nonunanimous jury verdict amounts to a 'substantial denial in the proceedings resulting in petitioner's conviction *** of petitioner's rights under the Constitution of the United States *** which denial rendered the conviction void', for which post-conviction relief 'shall be granted'. ORS 138.530(1)(a)".

Furthermore, the Oregon Court of Appeals found Ramos does apply retroactively.

Stephenson v Kelly, 325 Or App 462 (2023)

"[T]he state now acknowledges the Oregon Supreme Court's decision in Watkins v Ackley held that, under Oregon's Post-Conviction Hearings Act, ORS 138.510 to 138.680, Ramos does apply retroactively. The state therefore ... asks this court to 'reverse and remand for further proceedings' ... we agree".

Five months ago the Oregon Court of Appeals reaffirmed this Post-Conviction Court must hear Petitioner's claim that Defendant is violating the Sixth Amendment by imprisoning Petitioner by virtue of Unconstitutional nonunanimous guilty jury verdicts.

Manning v Kelly, 325 Or App 31 ; 528 P3d 319 (8-29-2023)

"The Superintendent concedes that the post-conviction court erred in its conclusion that Ramos does not apply retroactively and that we should reverse and remand this matter".

The Manning decision followed the precedent of numerous other Oregon Appellate Court decisions.

Huggett v Kelly, 370 Or 645; 523 P3d 84 (2022)

"Petitioner here is entitled to post-conviction relief on that claim for the same reasons that the petitioner in Watkins was entitled to relief, meaning that the post-conviction court's denial of relief must be reversed".

Marshall v Myers, 324 Or App 126; 524 P3d 992 (2023)

"The Oregon Supreme Court has recently issued several decisions addressing the retroactivity of Ramos as relevant to post-conviction cases. Most significantly in Watkins, the Court held: "[W]e now hold that, when a petitioner seeks post-conviction relief, on Sixth Amendment grounds, from a judgment of conviction which was based on a nonunanimous verdict and which became final before the Supreme Court's Ramos decision issued, the petitioner is entitled to relief ...".

Petitioner is seeking post-conviction relief on Sixth Amendment grounds. It's long been held the government is required to prove its case against the accused beyond a reasonable doubt. In Petitioner's case, the State failed to prove its case to two jurors on four of the five charges against the accused.

The Trial Court accepted the jury verdict to convict by a vote of 10-2 on Counts 2-5. The United States Supreme Court found this type of nonunanimous jury verdict violates Petitioner's Sixth Amendment Constitutional Right to a fair trial.

Since then, the State has conceded nonunanimous guilty jury verdicts must be reversed. The Oregon Appellate Courts have agreed, accepted the State's concessions, and reversed the nonunanimous convictions on scores of cases, over and over again.

Petitioner carefully selected cases exactly like her own to show this Post-Conviction Court she has a legal right to have Counts 2-5 reversed in her case.

Respectfully Submitted,

Elizabeth Diane Downs

CERTIFICATE OF MAILING

I certify a true copy of this Petition for Post-Conviction Relief was mailed
the 19th day of January, 2024, addressed to the following:

Oregon Department of Corrections
Director Mike Reese
3723 Fairview Industrial Drive SE #200
Salem, Oregon 97302

Elizabeth Diane Downs W49707
CCWF 512-02-1L
PO Box 1508
Chowchilla, CA 93610-1508

1 EUGENE, OREGON - SUNDAY, JUNE 17, 1984 - 12:50 A.M.

2
3 (Outside the presence of the
4 jury.)

5 THE COURT: The word that we have is that
6 the jury has reached a verdict. And before they come
7 back in the courtroom, I want to caution everybody
8 against reacting in any way to the verdicts once
9 they're received.

10 We have five of them to read, and it would
11 be inappropriate for there to be any response
12 whatsoever. So please keep quiet.

13 Secondly, there are generally other
14 proceedings that need to continue after the receipt of
15 any verdict, and we need to get that on the record.
16 So please remain seated until the Court is in recess.

17 It will be just a couple of minutes, so
18 please remain seated until that time.

19 THE BAILIFF: Your Honor, the jury has
20 reached their verdicts. May they enter?

21 THE COURT: Yes.

22 (Whereupon, the jury enters
23 the courtroom.)

24 THE COURT: You may be seated.

25 Mr. Bendt, are you the foreman?

APPENDIX I

1 MR. BENDT: Yes.

2 THE COURT: Has the jury reached verdicts in
3 each count?

4 MR. BENDT: Yes, we have.

5 THE COURT: Would you hand them to the
6 bailiff, please?

7 The verdicts are as follows:

8 We the jury, duly impaneled and sworn to try
9 the above-entitled cause find the defendant guilty of
10 Murder, Count I; guilty of the crime of Attempted Murder,
11 Count II; guilty of the crime of Attempted Murder,
12 Count III; guilty of the crime of Assault in the First
13 Degree, Count IV; guilty of the crime of Assault in
14 the First Degree, Count V.

15 Dated the -- please be seated -- dated the
16 16th day of June, 1984, signed by Mr. Bendt, the
17 foreperson.

18 MR. BENDT, was each of these a unanimous
19 verdict?

20 MR. BENDT: No.

21 THE COURT: Was the Murder verdict
22 unanimous?

23 MR. BENDT: Yes.

24 THE COURT: And were the other four verdicts
25 by at least 10?

1 MR. BENDT: Yes.

2 THE COURT: Is there anybody who did not
3 vote for the verdict in Count 1, that is the murder? ①

4 Is there anybody who did not vote for that count? ②

5 (No response.)

6 THE COURT: Any request for a poll?

7 MR. JAGGER: No, your Honor.

8 THE COURT: The verdicts will be received.

THE JUDGE ACTUALLY ASKED THE JURY FOREMAN TWO QUESTIONS. MR. BENDT LOOKED TO HIS LEFT (AT DAVID BREWER) BOTH TIMES + REFUSED TO SWEAR THE JURORS VOTED UNANIMOUSLY TO CONVICT ON COUNT 1 (MURDER).

ONE MONTH LATER (A MONTH BEFORE SENTENCING) A FEMALE JUROR CONFIDED TO A COWORKER THERE NEVER WAS A UNANIMOUS VOTE TO CONVICT ON ANY OF THE FIVE COUNTS. JUROR BREWER WROTE 12 ON THE COUNT 1 BALLOT AND THREATENED EVERY OTHER JUROR TO BE SILENT ON THE MATTER.

25

THE COURT: The verdicts will be received.