

BELINDA PARKER-BROWN ET AL

DOCKET NUMBER C-712385

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA ET AL

STATE OF LOUISIANA

MEMORANDUM IN OPPOSITION TO REQUEST FOR PRELIMINARY INJUNCTION

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel, comes Defendant, Judge Dennis Waldron, who files the instant memorandum in opposition to the request for a preliminary injunction by Belinda Parker-Brown (“Parker-Brown”), Zena Crenshaw-Logal (“Crenshaw-Logal”) and Errol Victor, Sr. (“Victor”) (collectively, “Plaintiffs”), for the reasons set forth below.¹

A. FACTUAL BACKGROUND

Plaintiffs, all self-represented litigants, bring this suit for injunctive relief requesting that this Court enjoin the criminal prosecution of Plaintiff, Errol Victor, Sr., recently concluded in the 40th Judicial District for the Parish of St. John the Baptist. Specifically, the First Amended Petition alleges that Victor was charged with second-degree murder in violation of La. R.S. 14:30.1 by grand jury indictment on or about September 22, 2009 stemming from the death of his stepson. *First Amended Petition*, pars. 4-5. On August 1, 2014, Victor was convicted by a non-unanimous jury and thereafter sentenced to life imprisonment. *Id.*, par. 7. His conviction was affirmed by the Louisiana Fifth Circuit Court of Appeals on May 26, 2016. *Id.*, par 8; *State v. Victor*, 15-339 (La. App. 5 Cir. 5/26/16), 195 So.3d 128, 186. His writ application to the Louisiana Supreme Court was denied on October 15, 2018. *Id.*; *State v. Victor*, 2016-1516 (La. 10/15/18), 253 So.3d 1300. His subsequent rehearing request to the Louisiana Supreme Court was likewise denied. *Id.*; *State v. Victor*, 2016-1516 (La. 2/11/19), 263 So.3d 431.

On April 27, 2020, Victor’s petition for writ of certiorari to the U.S. Supreme Court was granted, vacating the Fifth Circuit judgment in light of *Ramos v. Louisiana*, 590 U.S. ---, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020), and remanded the case back to the Louisiana Fifth Circuit. *Id.*, par 10. On June 19, 2020, the Fifth Circuit vacated Victor’s 2014 conviction and sentence. *Id.*, par. 10. Specifically, the Fifth Circuit found that:

¹ Judge Waldron submits the instant opposition only in response to the Plaintiffs’ request for a preliminary injunction. This filing is not to be construed as a responsive pleading to the Petition or Amended Petition, neither of which has been properly served upon Judge Waldron.

“[c]onsidering that the United States Supreme Court has vacated the judgment in defendant's case because defendant was convicted of a “serious offense” by a non-unanimous jury verdict, and that the instant case is still pending on direct appeal, in compliance with the United States Supreme Court's directive in *Ramos*, ***we find that defendant is entitled to a new trial***. Accordingly, in light of the Supreme Court's decision in *Ramos*, ***we vacate defendant's conviction and sentence and remand the matter to the trial court for further proceedings*** consistent with this opinion.”

State v. Victor, 15-339 (La. App 5 Cir. 6/19/20), 307 So.3d 317, 321 (emphasis supplied).

The First Amended Petition likewise alleges that, as of the filing, Victor was retried in the 40th Judicial District Court, resulting in a unanimous jury finding him guilty of second-degree murder. *Id.*, pars. 3, 40. The petition also alleges that sentencing was scheduled to proceed on July 26, 2022. *Id.*, par. 41.

The Amended Petition contends that a second trial, after his 2014 sentence was vacated, is prohibited by the Double Jeopardy Clause of the federal Constitution and amounts to an “acquittal”. The Amended Petition seeks an *ex parte* temporary restraining order, preliminary injunction, and permanent injunction preventing the defendants from finalizing the jury verdict against Victor, including entering the sentencing phase. *Id.*, prayer for relief. The petition also requests a judgment declaring that Victor cannot be retried, as such retrial would be barred by the Double Jeopardy Clause, and requests that Victor be released from custody. *Id.*

B. PROCEDURAL HISTORY

On July 20, 2022, Plaintiffs filed their *Petition for Injunction with Request for Temporary Restraining Order and Preliminary Injunction* naming Judge Waldron and the State of Louisiana as defendants.² Thereafter, on July 25, 2022, Plaintiffs filed their *First Amended Petition for Injunction and Declaratory Relief, Verified with Request for Ex Parte Temporary Restraining Order and Preliminary Injunction*.

This Court denied Plaintiff's request for a temporary restraining order but set a hearing for August 11, 2022 on Plaintiff's preliminary injunction seeking to enjoin the retrial of Victor.

C. LAW AND ARGUMENT

1. Standard for Preliminary Injunction.

“An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law.” La. C.C.P. article 3601(A). “The writ of injunction, a harsh, drastic, and extraordinary remedy, should only issue in

² Plaintiffs appear to have amended the petition after Victor's second conviction in July 2022. To the extent that Plaintiffs still seek relief to enjoin the trial, which has now concluded, such relief is now moot.

those instances where the moving party is threatened with irreparable loss or injury, and is without an adequate remedy at law.” *Concerned Citizens for Proper Planning- LLC v. Parish of Tangipahoa*, 2004-0470 (La. App. 1 Cir. 3/24/05), 906 So. 2d 660, 664, citing *Conway v. Stratton*, 434 So.2d 1197, 1198 (La. App. 1 Cir.1983).

“A preliminary injunction is essentially an interlocutory order issued in summary proceedings incidental to the main demand for permanent injunctive relief.” *Id.* Preliminary injunctions are “designed to preserve the status quo pending a trial of the issues on the merits of the case.” *Id.* The party moving for a preliminary injunction bears the burden of proof and must show that: (1) the mover will suffer irreparable injury, loss, or damage if the motion is not granted; (2) the mover is entitled to the relief sought; and (3) the mover will likely prevail on the merits of the case. *Randazzo v. Imbraguglio*, 2021-0679 (La. App. 4 Cir. 5/25/22), --- So.3d ---, 2022 WL 1659116, *13. A mover who seeks a prohibitory preliminary injunction must make a *prima facie* showing that he is entitled to the relief sought. *Id.*

2. Judge Waldron Has Never Been Properly Served.

Judge Waldron was never properly served with either the original Petition or the Amended Petition. Filing of the instant opposition shall not be construed a waiver of service, and Judge Waldron objects to any proceeding, including the hearing on the preliminary injunction, for which he was not properly served and joined.

3. Plaintiffs Are Not Entitled to the Relief Sought and Are Not Likely To Prevail On The Merits.

a. Parker-Brown and Crenshaw-Logal Lack Standing to Bring This Action. The Louisiana Supreme Court has articulated the standing requirements as follows:

“when addressing a litigant's standing, we have found that the predicate requirement of standing is satisfied if it can be said that the litigant has an interest at stake in litigation which can be legally protected. Conversely, a litigant who is not asserting a substantial existing legal right is without standing in court. In addition, that a party has the legal capacity to appear in court does not alone define standing; rather, standing is gauged also by the specific statutory or constitutional claims that the party presents and the party's relationship to those claims. The standing inquiry requires careful examination of whether a particular litigant is entitled to an adjudication of the particular claims it has asserted.”

In re Matter Under Investigation, 2007-1853 (La. 7/1/09), 15 So.3d 972, 981 (internal citations and quotations omitted). “When the facts alleged provide a remedy to someone, but the litigant who seeks relief is not the person in whose favor the law extends the remedy, that litigant is

without standing.” *Id.*, 15 So.3d at 982. Failure of a party to have a “direct and present interest” in the litigation is fatal to their claim. *Id.*

Here, Parker-Brown and Crenshaw-Logal each fail to have any direct and present interest in the retrial of Mr. Victor, which is the sole basis of the current lawsuit. Parker-Brown alleges that she is a co-founder and CEO of Louisiana United International, Inc. (“LUI”)³ whose function is to advocate for civil, constitutional and human rights. *First Amended Petition*, par 1. Parker-Brown contends that Victor is a member of LUI and that he and other LUI members were convicted of a less than unanimous jury verdict. *Id.*

Crenshaw-Logal, in turn, is domiciled in Georgia. *Id.*, par. 2. She alleges that she has a Juris Doctorate and was licensed by the State of Indiana in 1984. *Id.* However, she was suspended from the bar of Indiana in 2004 and “has yet to seek reinstatement to the Indiana bar of attorneys.” *Id.* Crenshaw-Logal also alleges she is LUI’s Assistant Chief of Operations and “leads the organization’s collaboration with national Judicial Conduct and Disability Law Project, Inc.”, which she cofounded. *Id.*

Notably, neither Parker-Brown nor Crenshaw-Logal represent that they are licensed attorneys in the State of Louisiana, nor have they attempted to move for admission in this Court via *pro hac vice*⁴ admission in this matter. In fact, the petition makes clear that all three plaintiffs appear in this matter “separately and *pro se*”. *Id.*, p. 1.

While Parker-Brown and Crenshaw-Logal contend they signed off on a complaint submitted to the U.N. Human Rights Council, *Id.*, par. 2, such contention is insufficient to confer standing on either. A review of the petition reveals that the sole focus of this lawsuit is to stop or thwart the retrial and sentencing of Victor in another Louisiana district court. In fact, the prayer for relief speaks exclusively to relief directed toward Victor. The original petition sought to prevent the defendants from proceeding with the trial of Victor. The amended petition seeks to restrain the defendants from “finalizing” the unanimous jury verdict against Victor and requests that Victor be released from custody. If granted, none of the requested relief would apply to either Parker-Brown or Crenshaw-Logal, as neither have a direct or present interest in the litigation. As such, neither has standing to bring this action, including the instant preliminary injunction request.

³ Louisiana United, Inc. is not a party to this litigation.

⁴ Nor could they meet the qualifications set forth by the Louisiana Supreme Court in Rule XVII, Section 13, which requires an out of state attorney to be in good standing of the bar of any U.S. District Court or the highest court of any state, territory or insular possession of the United States or District of Columbia.

b. Judge Waldron is Entitled to Judicial Immunity. Judges have absolute judicial immunity for judicial acts performed within their jurisdiction, and this judicial immunity cannot be overcome by allegations of bad faith or malice. *Pierson v. Ray*, 386 U.S. 547 (1967); *See also Haley v. Leary*, 2009-1626 (La. App. 4 Cir. 8/4/10), 69 So.3d 430. Courts have consistently held that judicial immunity is an immunity *from suit itself*, not just the ultimate assessment of damages. *Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286, 288, 116 L.Ed.2d 2 (1991). Judicial immunity applies to all judges, whatever their status, in the judicial hierarchy.

This immunity has been extended to insure that all judges will be free to fulfill their responsibilities without the threat of civil prosecution by disgruntled litigants. *Knapper v. Connick*, 96-0434 (La. 1996), 681 So.2d 944, 946. The factors used in determining judicial immunity are:

1. Whether the precise act complained of is a normal judicial function;
2. Whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers;
3. Whether the controversy centered around a case pending before the court; and,
4. Whether the acts arose directly out of a visit to the judge in his official capacity.

Haley v. Leary, 69 So.3d at 433. These four factors are to be broadly construed in favor of immunity, and immunity should not be denied where the denial carries the potential of raising more than a frivolous concern in a judge's mind that to take proper action might expose him to personal liability. *Id.*

Here, Judge Waldron has been sued *because* he is presiding over the criminal suit against Victor in the 40th Judicial District Court for the Parish of St. John the Baptist. *First Amended Petition*, par. 3. This suit clearly seeks to prevent Judge Waldron from performing traditional judicial functions, namely presiding over Victor's criminal matter post-verdict. Plaintiffs, as disgruntled litigants, are requesting that this Court prohibit Judge Waldron from fulfilling his judicial responsibilities with the threat of civil prosecution—the very scenario absolute judicial immunity seeks to prevent. *See Knapper*, 681 So.2d at 946. Based upon the factors set forth above, this suit plainly falls within the scope of judicial immunity. Accordingly, Judge Waldron is entitled to absolute judicial immunity.

c. This Court Lacks Subject Matter Jurisdiction Over The Claims. Plaintiffs assert that subjecting Victor to a second trial would violate the Double Jeopardy Clause and that the 2014 non-unanimous verdict is tantamount to an "acquittal". *First Amended Petition*, pars. 29, 30.

Plaintiffs' attempt to have this Court interfere with the pending criminal matter in the 40th JDC and to order that Victor be released are outside of this Court's jurisdiction.

First, this is an impermissible collateral attack on a criminal conviction in a separate district court in an attempt to circumvent Judge Waldron's jurisdiction. One state district court may not enter an injunction ordering a separate and co-extensive district court to handle a criminal case that falls within its original jurisdiction. See, La. Const. Art. V, §16(A).

Secondly, this action is an attempt to circumvent direct appeals and/or post-conviction procedures, after Victor is sentenced. Such claims plainly should be brought in either a direct appeal or a post-conviction application, not a civil suit for injunctive and declaratory relief. See, La. R.S. C.Cr.P. article 930.3; *Williams v. Harding*, 2012-1595 (La. App. 1 Cir. 4/26/2013), 117 So.3d 187, 191 (“[j]urisprudence clearly holds that civil suits are not allowed to collaterally attack previous criminal convictions.”); *Straughter v. La. Department of Public Safety and Corrections*, 2017-0384 (La. App. 1 Cir. 11/1/17), 233 So.3d 89, 91, *writ denied*, 263 So.3d 893 (La. 2/11/19) (“[i]t is well-settled that prisoners may not use civil proceedings to collaterally attack previous criminal convictions.”); and *Horrell v. Matthews*, 2006-1838 (La. App. 1 Cir. 8/15/07), 2007 WL 2318134, *3 (“lawful proceedings in a pending action of any kind cannot be enjoined in a separate action.”). See also, *State v. Ortiz*, 11,2799 (La. 1/29/13), 110 So.3d 1029, 1034 (“[g]rounds for post-conviction relief in Louisiana are primarily restricted to constitutional or jurisdictional violations.”)

Because this Court has no jurisdiction to sit in review of a fellow district court, Plaintiffs are unlikely to succeed on the merits on their claims.

d. Victor Has Raised These Same Claims In Two Prior Federal Cases. Victor has filed two separate federal court suits since his 2014 conviction and sentence were vacated. In both cases, he attacks his retrial on Double Jeopardy Clause grounds; the instant suit is now the *third* such suit filed by Victor.

In the first suit filed in 2021, Victor filed a federal habeas corpus proceeding in the Eastern District of Louisiana, challenging the pending state trial on the grounds of double jeopardy. *Victor v. Robinson*, 20-CV-3194 (E.D. La. 11/24/20). See, Exhibit “A”, *Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241*, pg 7, wherein he asserts as Ground 1, a Double Jeopardy violation:

GROUND ONE: Petitioner's 5th Amendment of the U.S.C. is being violated pursuant to "Double Jeopardy Clause" prohibition. A pending State trial would violate the Double Jeopardy Clause of the Federal Constitution, 14th Amendment due Process.

In consideration of this application, Magistrate Judge Van Meerveld rejected Victor's identical legal argument that he makes in the current litigation – that he could not be retried after his conviction and sentence were vacated by the United States Supreme Court. As Judge Van Meerveld stated succinctly:

"To the extent that petitioner is arguing that double jeopardy now bars his retrial, he is clearly wrong. It has long been settled that the Double Jeopardy Clause's general prohibition against successive prosecutions does not prevent the government from retrying a defendant who succeeds in getting his first conviction set aside, through direct appeal or collateral attack, because of some error in the proceedings leading to conviction. Any suggestion that this general rule would be inapplicable to convictions vacated due a Ramos violation not only finds no support in the jurisprudence resulting from Ramos, but it is also contrary to Ramos itself. In Ramos, the Supreme Court expressly acknowledged that those prisoners who were being afforded relief as a result of the decision would still face continued prosecution."

Victor v. Robinson, 20-3194, 2021 WL 2482520, *5 (E.D. La. 5/28/21), report and recommendation adopted, 2021 WL 2477257 (E.D. La. June 17, 2021) (internal citations omitted) (emphasis supplied). A copy of the Report and Recommendation is attached as Exhibit "B".

Most recently, on July 7, 2022, Victor filed an amended federal complaint in the Eastern District naming Judge Waldron as a defendant, in which he continues to assert that the non-unanimous jury verdict amounts to the functional equivalent of an acquittal. *Victor v. State of Louisiana*, 22-CV-1539, E.D. La. See, Exhibit "C", Amended Complaint, pgs. 13-15. Such suit is currently pending.

To the extent that the issue of the applicability of the Double Jeopardy Clause to Victor's retrial has been reviewed and rejected by the Eastern District in the federal habeas suit, such claim would be barred by *res judicata*. Furthermore, to the extent that there is currently pending a federal civil action asserting the same legal claims, the instant suit is subject to a stay. See, La. C.C.P. article 532 ("When a suit is brought in a Louisiana court while another is pending in a court of another state or of the United States on the same transaction or occurrence, between the same parties in the same capacities, on motion of the defendant or on its own motion, the court may stay all proceedings in the second suit until the first has been discontinued or final judgment has been rendered.").

For this reason as well, the claims are not likely to succeed and the request for preliminary injunction should be denied.

4. An Adequate Remedy At Law Exists. If a party has an adequate legal remedy, then an injunction is unavailable. Louisiana courts have found that injunctions issued against public bodies to prevent the bodies from performing statutorily-authorized functions when an adequate remedy at law exists is erroneous. *Kruger v. Garden District Association*, 2000-1135 (La. App. 4 Cir. 1/17/01), 779 So.2d 986, 991, writ denied, (La. 5/4/01), 791 So.2d 658. See also, *Smith v. Brumfield*, 2013-1171 (La. App 4 Cir. 1/15/14), 133 So.3d 70 (petitioner not entitled to injunction for reimbursement of expenses incurred in preserving property purchased at tax sale where state law provides procedure where tax sale purchaser can be reimbursed.)

Here, Victor alleges that he should not be retried after his original sentence and conviction were vacated. He contends that doing so violates his constitutional rights under the Double Jeopardy Clause. However, Louisiana law provides criminal defendants with the opportunity to challenge the constitutionality of Louisiana laws or actions taken during criminal trials. See, *State v. Hatton*, 2007-2377 (La. 2018), 985 So.2d 709, 719 (explaining the procedure for raising a constitutional challenge). Moreover, Judge Waldron, as an ad hoc judge presiding over a criminal action in the 40th Judicial District Court, is not only authorized to adjudicate claims of a constitutional dimension but is also required by Louisiana law to consider constitutional challenges raised by criminal defendants. *Id.*, (“It is well-settled that a constitutional challenge may not be considered by an appellate court unless it was properly leaded and raised in the trial court below.”)

Furthermore, Louisiana law permits a petitioner to challenge his conviction or sentence in a post-conviction proceeding by asserting such conviction or sentence was obtained in violation of either the U.S. or Louisiana constitutions or that the conviction or sentence subjected the petitioner to double jeopardy. See, La. C.Cr.P. article 930.3(1), (3). After a conviction or sentence, a petitioner can assert such claims through either a state habeas petition or a federal habeas petition (which, as explained above, Victor has already done recently). Thus, Victor clearly has multiple procedures by which he can assert constitutional challenges. Allowing him to utilize the “extraordinary remedy” of a preliminary injunction as a way to thwart well-established criminal procedures cannot be permitted.

D. CONCLUSION

For the above reasons, the request for a preliminary injunction by Belinda Parker-Brown, Zena Crenshaw-Logal and Errol Victor, Sr, should be denied at their costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon all parties to this proceeding by mailing same via email and via United States Mail, properly addressed and postage prepaid:

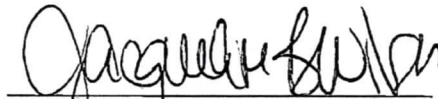
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Baton Rouge, Louisiana, on this 8 day of August, 2022.



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