

Case Brief: *State v. Robinson**

INTRODUCTION

On August 14, 2020, the Supreme Court of North Carolina changed the course of Marcus Robinson's life.¹ The court vacated Robinson's death sentence under the since-repealed Racial Justice Act ("RJA" or "the Act"),² reinstating his sentence of life imprisonment without parole.³ This was not the first time Robinson had been taken off death row.⁴ In 2012, Robinson successfully challenged his capital sentence under the RJA and was resentenced to life imprisonment.⁵ However, the following year, Republicans strengthened their control over the North Carolina legislature.⁶ The legislature repealed the RJA⁷ and added a provision to make the repeal apply retroactively.⁸ Robinson returned to death row.⁹

In its recent decision in *State v. Robinson*,¹⁰ the Supreme Court of North Carolina held that the trial court violated Robinson's rights under the North Carolina Constitution by reimposing his death sentence pursuant to the repeal of the RJA.¹¹ In the court's view, the trial court's 2012 finding that race was a substantial factor in Robinson's sentencing constituted an acquittal of the death penalty for purposes of double jeopardy.¹² The *Robinson* decision marked the first time the Supreme Court of North Carolina explicitly recognized the pervasive racial bias evident in the state's use of capital punishment.¹³

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1. See *State v. Robinson*, 375 N.C. 173, 191, 846 S.E.2d 711, 725 (2020).

2. Ch. 464, 2009 N.C. Sess. Laws 1213 (2009), repealed by Act of June 19, 2013, ch. 154, § 5(a), 2013 N.C. Sess. Laws 368, 372. The 2009 Racial Justice Act allowed defendants to challenge their capital sentences by proving that racial discrimination and bias infected their trial and sentencing. See *id.*; *Robinson*, 375 N.C. at 175, 846 S.E.2d at 714–15.

3. See *Robinson*, 375 N.C. at 192, 846 S.E.2d at 725.

4. *Id.* at 181, 846 S.E.2d at 718.

5. *Id.*

6. See Emery P. Delasio, *GOP Sees Big Wins in N.C. Offices Including Governor*, USA TODAY, <https://www.usatoday.com/story/news/politics/2012/11/06/north-carolina-election-results/1658363/> [<https://perma.cc/W33T-KHEV>] (Nov. 7, 2012, 1:13 AM).

7. Act of June 19, 2013, ch. 154, § 5(a), 2013 N.C. Sess. Laws 368, 372.

8. *Id.* § 5(d), 2013 N.C. Sess. Laws at 372; see *Robinson*, 375 N.C. at 181–82, 846 S.E.2d at 718–19.

9. *Robinson*, 375 N.C. at 182–83, 846 S.E.2d at 719.

10. 375 N.C. 173, 846 S.E.2d 711 (2020).

11. *Id.* at 198–90, 846 S.E.2d at 723.

12. *Id.*

13. See *id.* at 178, 846 S.E.2d at 716 (“The same racially oppressive beliefs that fueled segregation manifested themselves through public lynchings, the disproportionate application of the death penalty against African-American defendants, and the exclusion of African-Americans from juries.”).

BACKGROUND

In 2009, the North Carolina General Assembly enacted a historic piece of legislation: the RJA.¹⁴ The Act sought to eliminate racial bias and discrimination from capital sentencing.¹⁵ Defendants were able to present evidence, including statistical studies, to show that racial bias was a significant factor contributing to the imposition of the death penalty.¹⁶ In the four years following the RJA's passage, more than 140 prisoners filed challenges.¹⁷

Marcus Robinson, who had been convicted of first-degree murder and sentenced to death in 1994, brought a timely claim under the RJA in 2010.¹⁸ In 2012, the trial court found that Robinson had successfully demonstrated that race was a significant factor during jury selection in his case and thus resentenced Robinson to life imprisonment.¹⁹

After Robinson's hearing, control of the governorship changed parties, and the Republican majority in the legislature grew;²⁰ the Republican legislature amended the RJA, scaling back defendants' ability to use statistical evidence in future RJA claims.²¹ Less than a year later, in 2013, the General Assembly repealed the RJA entirely.²² The repeal voided all pending motions *and* applied retroactively.²³ However, the repeal did not apply to a trial court order

14. Ch. 464, 2009 N.C. Sess. Laws 1213 (2009), *repealed by* Act of June 19, 2013, ch. 154, § 5(a), 2013 N.C. Sess. Laws 368, 372; *see* Robinson, 375 N.C. at 175, 846 S.E.2d at 714.

15. § 1, 2009 N.C. Sess. Laws at 1214; *see* Robinson, 375 N.C. at 175, 846 S.E.2d at 714.

16. § 1, 2009 N.C. Sess. Laws at 1214; *see* Robinson, 375 N.C. at 176–77, 846 S.E.2d at 715 (“The RJA was the first law in the country to allow for a finding of racial discrimination during jury selection without requiring proof of intentional discrimination.”).

17. *North Carolina Supreme Court Restores Racial Justice Act Ruling Taking Marcus Robinson Off Death Row*, DEATH PENALTY INFO. CTR. (Aug. 17, 2020), <https://deathpenaltyinfo.org/news/north-carolina-supreme-court-restores-racial-justice-act-ruling-taking-marcus-robinson-off-death-row> [https://perma.cc/4M3L-PB46].

18. Robinson, 375 N.C. at 179, 846 S.E.2d at 717.

19. *Id.* at 190–91, 846 S.E.2d at 724. Over the thirteen-day hearing, Robinson presented testimony by seven expert witnesses and introduced over 170 exhibits. *Id.* at 179, 846 S.E.2d at 717. Robinson's claim relied heavily on a comprehensive study of jury selection in North Carolina by researchers at Michigan State University College of Law that found African American jurors in the state were more than two times as likely to be struck as all other jurors. *Id.* The study specifically showed disparities in the county and judicial district where Robinson's trial occurred. *Id.* At the outset of the trial, the State brought a third motion to continue, asking for more time to collect data from state prosecutors in order to rebut the Michigan State University study. The trial court denied the State's motion. *Id.*

20. *See* Delasio, *supra* note 6.

21. An Act to Amend Death Penalty Procedures, ch. 136, § 3, 2012 N.C. Sess. Laws 471, 471–73, *repealed by* Act of June 19, 2013, ch. 154, § 5(a), 2013 N.C. Sess. Laws 368, 372; *see* Robinson, 375 N.C. at 190–91, 846 S.E.2d at 724.

22. Act of June 19, 2013, ch. 154, § 5(a), 2013 N.C. Sess. Laws 368, 372; *see* Robinson, 375 N.C. at 182, 846 S.E.2d at 718.

23. § 5(d), 2013 N.C. Sess. Laws at 372; *see* Robinson, 375 N.C. at 182, 846 S.E.2d at 718.

resentencing a defendant to life imprisonment if that order was affirmed upon appellate review.²⁴

Following the repeal of the RJA, the State petitioned the Supreme Court of North Carolina and argued that the trial court abused its discretion by failing to grant the State's motion to continue.²⁵ At the beginning of Robinson's initial RJA hearing, the State had requested more time in order to collect additional data responding to the Michigan State University Study core to Robinson's proof.²⁶ In 2015, the Supreme Court of North Carolina agreed with the State and vacated the trial court's 2012 order granting Robinson's motion for appropriate relief ("MAR") and remanded the case for new evidentiary proceedings.²⁷ The court did not address the merits of the underlying claim nor the constitutional and statutory challenges to the RJA.²⁸

In 2016, the trial court held a joint hearing with Robinson and three other defendants who had also successfully brought RJA claims prior to its repeal.²⁹ The court held that the defendants' rights had not vested and that the RJA repeal was not an ex post facto law.³⁰ The court did not address whether the repeal violated double-jeopardy protections under the state and federal constitutions.³¹ Nonetheless, the trial court concluded that the retroactive effect of the RJA repeal voided the defendants' claims.³² Robinson and the other three defendants were returned to death row.³³

In 2017, Robinson appealed to the Supreme Court of North Carolina to consider whether the retroactive application of the RJA repeal violated the double-jeopardy protections under the North Carolina Constitution.³⁴

LEGAL ISSUES AND OUTCOMES

The court³⁵ ultimately found that after Robinson's capital sentence was vacated under the RJA, double-jeopardy protections embodied within the

24. § 5(d), 2013 N.C. Sess. Laws at 372; see *Robinson*, 375 N.C. at 182, 846 S.E.2d at 718.

25. *Robinson*, 375 N.C. at 182, 846 S.E.2d at 718–19.

26. *State v. Robinson*, 368 N.C. 596, 596, 780 S.E.2d 151, 151 (2015).

27. *Robinson*, 375 N.C. at 182, 846 S.E.2d at 719.

28. *Id.*

29. *Id.*

30. *Id.* In this context, the category of ex post facto laws at issue are laws "that make[] the range or measure of punishments [for a crime] even more severe." *State v. Ramseur*, 374 N.C. 658, 667, 843 S.E.2d 106, 112 (2020).

31. *Robinson*, 375 N.C. at 182, 846 S.E.2d at 719.

32. *Id.* at 182–83, 846 S.E.2d at 719.

33. See *id.*

34. *Id.* at 183, 846 S.E.2d at 719.

35. The court was divided in its decision: Chief Justice Beasley's opinion was joined by Justice Earls and Justice Morgan, *id.* at 175–92, 846 S.E.2d at 713–25, with Justice Hudson concurring, *id.* at 192–93, 846 S.E.2d at 725 (Hudson, J., concurring). Justice Ervin dissented, joined by Justice Davis. *Id.* at 214–24, 846 S.E.2d at 738–45 (Ervin, J., dissenting). Justice Newby dissented separately. *Id.* at 193–214, 846 S.E.2d at 725–38 (Newby, J., dissenting).

North Carolina Constitution's Law of the Land Clause³⁶ barred reinstatement of his capital sentence.³⁷ The court explained that double-jeopardy protections apply if an event terminates the original jeopardy, such as an acquittal.³⁸ And when jeopardy is terminated by an acquittal, the State cannot appeal any decision potentially exposing the defendant to another trial for the same offense.³⁹

The court equated the RJA to an affirmative defense against the death penalty, noting that “[o]nce the trial court found that Robinson had proven all of the essential elements under the RJA . . . he was acquitted of that capital sentence, jeopardy terminated, and any attempt by the State to reimpose the death penalty would be a violation of our state’s constitution.”⁴⁰ Thus, the court concluded, the trial court’s original 2012 order resentencing Robinson to life imprisonment was an acquittal for the purposes of double jeopardy.⁴¹ The court reasoned that the life sentence imposed in 2012 by the trial court came after a hearing that bore “the hallmarks of the trial on guilt or innocence” and was based on sufficient findings.⁴²

Finally, the court addressed the underlying procedural issue: whether the 2012 judgment resentencing Robinson to life imprisonment was reviewable.⁴³ It reasoned that the State failed to petition the court for review of the 2012 RJA judgment.⁴⁴ And, further, when the trial court entered its order granting Robinson’s MAR, it also entered a separate judgment and commitment order resentencing him to life imprisonment.⁴⁵ When the State sought review of the 2012 order, it was for the MAR, *not* the trial court’s judgment and commitment order vacating Robinson’s death sentence and resentencing him to life imprisonment.⁴⁶ The majority noted that “[n]o notice of appeal or petition for writ of certiorari was filed by the State as to the judgment or commitment order.”⁴⁷ As a result, the State failed to seek review of and could not later seek review of the judgment sentencing Robinson to life imprisonment, nor did the State possess any statutory authority to seek review of the judgment.⁴⁸ In other

36. N.C. CONST. art. I, § 19.

37. *Robinson*, 375 N.C. at 183, 846 S.E.2d at 719 (majority opinion).

38. *Id.* at 184, 846 S.E.2d at 720.

39. *Id.* at 185–86, 846 S.E.2d at 721.

40. *Id.* at 187, 846 S.E.2d at 722.

41. *Id.*

42. *Id.* at 188, 846 S.E.2d at 722.

43. *Id.* at 190, 846 S.E.2d at 724.

44. *Id.* at 190–91, 846 S.E.2d at 724.

45. *Id.*

46. *Id.* at 191, 846 S.E.2d at 724.

47. *Id.*

48. *Id.*

words, the judgment and commitment order were final and not subject to appellate review.⁴⁹

Justice Hudson concurred, agreeing with the majority's double-jeopardy analysis, but rejecting the notion that the trial court's 2012 order was final.⁵⁰ Justice Hudson explained that the State was permitted to, and indeed did, seek review of the 2012 order.⁵¹ Ultimately though, the justice agreed that the separate judgment and commitment order remained a final judgment of which appellate review was not sought.⁵²

Justice Ervin, joined by Justice Davis, dissented, while clarifying that his opinion should not "be understood as expressing any doubt about the fundamental importance of the goals sought to be achieved by the Racial Justice Act or the pressing need to completely eradicate racial and all other forms of odious discrimination from our system of justice."⁵³ Because the case failed to align with *State v. Ramseur*,⁵⁴ Justice Ervin believed that the case should be remanded to the trial court for further proceedings consistent with *Ramseur*.⁵⁵ In *Ramseur*, the court held that retroactive application of the repealed RJA to a defendant's pending RJA motion violated the prohibition against ex post facto laws and remanded the case for further hearing on the merits of the defendant's RJA claim.⁵⁶ Justice Ervin explained that "a trial court order granting relief pursuant to the Racial Justice Act and the entry of a related judgment of life imprisonment is not an unreviewable decision entitled to double jeopardy protection."⁵⁷

In Justice Ervin's view, the application of double-jeopardy protections on RJA grounds was foreclosed by the court's decision in 2015 which remanded Robinson's case for further evidentiary hearing.⁵⁸ Robinson presented a double-jeopardy argument before the court then in 2015, so if double-jeopardy protections indeed applied, the court would have had to enforce those rights in its prior decision to remand.⁵⁹ Accordingly, Justice Ervin found it difficult to read the court's 2015 decision "as anything other than a rejection of defendant's double jeopardy claim in light of the fact that no such remand would have been

49. *Id.*

50. *Id.* at 192–93, 846 S.E.2d at 724 (Hudson, J., concurring).

51. *Id.*

52. *Id.*

53. *Id.* at 223, 846 S.E.2d at 744 (Ervin, J., dissenting).

54. 374 N.C. 658, 843 S.E.2d 106 (2020).

55. *Robinson*, 375 N.C. at 223, 846 S.E.2d at 744.

56. *Ramseur*, 374 N.C. at 677, 843 S.E.2d at 118.

57. *Robinson*, 375 N.C. at 224, 846 S.E.2d at 744.

58. *Id.*

59. *Id.* at 224, 846 S.E.2d at 744–45.

permissible had [the 2015 order] and the related judgment been entitled to double jeopardy effect.”⁶⁰

Justice Ervin’s dissent also reasoned that the 2012 RJA order that the majority understood to be the equivalent of an acquittal was erroneous in two respects.⁶¹ First, the majority view “fail[ed] to take the procedural context in which that decision was made,” ignoring that “double jeopardy-related rules applicable to acquittals that occur before and after the initial verdict are different.”⁶² Second, the majority “implicitly vacates [the c]ourt’s 2015 order overturning [the 2012 order] and remanding [the] case.”⁶³

Justice Newby also dissented. While agreeing with Justice Ervin about remanding the case for a new RJA hearing as commanded by *Ramseur*,⁶⁴ Justice Newby went so far as to suggest the majority was inexcusably engaging in “judicial activism.”⁶⁵

POTENTIAL IMPACT

The Supreme Court of North Carolina’s decision in *Robinson* is undoubtedly historic. The RJA signaled an important but short-lived step in redressing the state’s odious racial discrimination that has infected the trials and sentencing of defendants facing the death penalty. North Carolina must continue to reckon with its egregious legacy of racial discrimination. However, as evidenced by the fractured opinions in this case, the grounds on which the majority reached its ultimate decision are shaky. The court’s determination that the 2012 trial court order granting relief to Robinson under the RJA constituted an acquittal for double jeopardy purposes is ultimately inconsistent with decisions of the U.S. Supreme Court and North Carolina’s own precedents.⁶⁶

Notably, when a defendant is acquitted following a jury verdict or bench trial decision, double jeopardy does not prevent the government from appealing the acquittal.⁶⁷ Appellate reversal only reinstates the original verdict; it does not subject the defendant to a second trial.⁶⁸ And indeed, “[a]s long as [the] defendant would not be subjected to a new trial on the issues, his double

60. *Id.* at 220, 846 S.E.2d at 742.

61. *Id.* at 214, 846 S.E.2d at 738–39.

62. *Id.*

63. *Id.*

64. *Id.* at 194–95, 846 S.E.2d at 726 (Newby, J., dissenting).

65. *Id.* at 194, 846 S.E.2d at 726 (“Because confining itself to the 2017 remand order would deprive it of the opportunity to attack the motives of prosecutors, jurors, and even judges, three justices try to revive the vacated order through a misapplication of double jeopardy law that fully deserves to be labeled judicial activism; the court is legislating changes in the law from the bench.”).

66. *Id.* at 215, 846 S.E.2d at 739 (Ervin, J., dissenting) (citing *United States v. Wilson*, 420 U.S. 332, 344–45 (1975)).

67. *Id.*

68. *Id.* at 218, 846 S.E.2d at 741.

jeopardy rights have not been violated.”⁶⁹ In *United States v. Wilson*,⁷⁰ the U.S. Supreme Court upheld this very principle.⁷¹ Here, the 2012 order granting Robinson relief—which was vacated by the court in 2015 and remanded for further hearing—would “at most, have the effect of reinstating the original jury verdict and the resulting death sentence.”⁷² And further, had double jeopardy in fact applied when the court vacated the 2015 order and remanded Robinson’s case for further hearing, it would have had to have been enforced at that time.

Finally, the majority overlooked the court’s own decision in *Ramseur*, which both Justice Ervin and Justice Newby agreed should have controlled the outcome.⁷³ Both the reasoning in *Ramseur* and the court’s 2015 order suggest that the proper outcome in Robinson’s case would have been a finding that the trial court erred in voiding Robinson’s RJA claim based upon the RJA repeal, and a remand for further hearing, as required by the court’s 2015 order.⁷⁴

The notion that no person should be executed if race was a factor in their death sentence should not be controversial. Thus, the decision of the Supreme Court of North Carolina in *Robinson* to reinstate Marcus Robinson’s life sentence after he *successfully* proved that racial discrimination infected his capital trial and sentencing was undeniably significant. That being said, the means by which the court arrived at its decision are questionable at best and seemingly at odds with both the Supreme Court of North Carolina’s and the U.S. Supreme Court’s precedents governing review of lower court decisions in criminal cases.

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69. *Id.*

70. 420 U.S. 332 (1975).

71. *See id.* at 344–45.

72. *Robinson*, 375 N.C. at 215, 846 S.E.2d at 739.

73. *Id.* at 223, 846 S.E.2d at 744; *id.* at 214, 846 S.E.2d at 730 (Newby, J., dissenting).

74. *See id.* at 224, 846 S.E.2d at 745 (Ervin, J., dissenting).

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