

STATE OF LOUISIANA

*

NO. 2026-K-0648

VERSUS

*

COURT OF APPEAL

DAVID JEANJACQUES

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

* * * * *

SCJ JENKINS, J., DISSENTS AND ASSIGNS REASONS

I dissent and would deny the State’s writ application as L.C.Cr.P. art. 780(B)(2), as amended, was not in effect at the time Defendant filed his motion to waive jury trial.

The majority properly references the three types of law—substantive, interpretative, and procedural—as explained in *State v. Washington*, 2002-2196, p. 3 (La. 9/13/02), 830 So.2d 288, 290. The majority then finds La.C.Cr.P. art. 780(B)(2) is a procedural law and opines:

Defendant’s vested right is the statutory right to waive trial by jury, which was not disturbed by the amendment now requiring the procedural step of reallocation of the case to another division. As this Court pronounced in *Doe v. Jesuit High School of New Orleans*, “[o]ur jurisprudence is well-settled that ‘no one has any vested right in any given mode or procedure.’” 21-0284, pp. 7-8 (La. App. 4 Cir. 11/10/21), 331 So.3d 426, 432 (citations omitted).

However, whether the statute is a procedural law is not dispositive of this matter. Pursuant to the facts as outlined in *Washington* and *Doe v. Jesuit High School of New Orleans, supra*, the statute must be in effect at the time a party files for relief as a prerequisite to determining whether a statute applies retroactively or prospectively.

In *Washington*, the trial court granted the defendant’s motion to recuse on July 23, 1999, and ordered random reallocation to another judge. 2002-2196, p. 1,

830 So.2d at 289. The reallocation conflicted with La. C.Cr.P. art. 676(B), which at the time required the judge ad hoc who tried the recusal motion to continue to act as judge ad hoc for the trial of the case. *Id.* Thereafter, on April 9, 2002, the defendant filed a motion to correct the reallocation and have the case returned to the judge who initially presided over the trial, citing Code of Criminal Procedure article 676(B). *Id.* The trial judge to whom the case had been reallocated granted the motion. *Id.* The State sought supervisory review, noting that La. C.Cr.P. art. 676(B), as amended by Acts 2001, No. 417, Section 2, which went into effect on August 1, 2001, now required a case to be reassigned to another judge after a motion for recusal is granted. The *Washington* Court determined the trial court erred in granting the defendant's motion to correct allocation, noting that "by the time defendant *filed* his motion to recuse the randomly allotted trial judge, . . ., article 676 had been amended . . .;" and inasmuch as the law was procedural, it could be applied retroactively. 2002-2196, p. 3, 830 So.2d at 290.

In *Doe v. Jesuit High School of New Orleans*, the appellant filed suit in November 2019 against the defendants arising out of sexual abuse claims that dated back to 1978. 2021-0284, p. 2, 331 So.3d at 428-29. The defendants filed exceptions of prematurity, alleging the appellant had failed to comply with the provisions of La. R.S. 9:2800.9. *Id.*, 2021-0284, p. 1, 331 So.3d at 428. The issue on review was whether La. R.S. 9:2800.9 was substantive or procedural. *Id.*, 2021-0284, p. 4, 331 So.3d at 429. This Court found the procedural requirements of La. R.S. 9:2888.9 (B)-(D) applied to the appellant's petition *at the time of its filing*, and found the trial court properly granted the exception of prematurity and dismissed the appellant's petition. *Id.*, 2021-0284, p. 1, 331 So.3d at 428.

I also note the State relies, in part, on *Alvarez v. Touro Infirmary*, 2015-0606 (La. App. 4 Cir. 3/19/16), 187 So.3d 592, to bolster its argument that as La. C.Cr.P. art. 780(B)(2) is allegedly procedural, "it flows naturally then that the applicable

statute is the version in effect at the time the motion was actually heard.” The State’s reliance on *Alvarez* to support this argument is misplaced.

In *Alvarez*, the issue before this Court was the propriety of the trial court’s grant of summary judgment. In rendering its decision, the Court noted “[f]or purposes of this opinion, we refer to the statute as amended in 2014, which version was in effect at the time JCT’s motion was tried and decided.” *Id.*, p. 3, 187 So.3d at 593 n.3. Nonetheless, the *Alvarez* facts establish the defendant—JCT—*filed* its motion for summary judgment on November 15, 2014, after the 2014 amendment had gone into effect on August 1, 2014. Accordingly, based on the date of filing, the amended statute was in effect at the time the summary judgment motion was tried.

In the present matter, it is not disputed that Defendant filed his motion to waive jury trial on June 16, 2026, and complied with the statutory requirement of La. C.Cr.P. art. 780(B) to seek a waiver in advance of forty-five days of the trial date, which in this instance, was August 10, 2026. I find no requirement within the Louisiana constitution or any of the statutory provisions which conditions this right to the date the merits of the motion to waive jury trial is heard or decided. There also is no requirement for a defendant to seek relief based on a non-existent law at the time of filing.

In accordance with *Washington and Doe v. Jesuit High School*, determinations as to whether a statute is procedural or substantive for purposes of determining retroactive or prospective application require an initial inquiry as to whether the statute was in effect at the time the party filed for the relief requested. Hence, the issue of the statute’s procedural application in this case is of no consequence as the statute was not in effect at the time Defendant filed his motion to waive jury trial. The statute’s random re-allotment provisions did not apply; and

thus, the trial court had authority to consider the merits of Defendant's motion to waive jury trial based on the existing law at the time of filing.

Based on the foregoing reasons, I dissent. I would affirm the trial court's judgment and deny the State's writ application.