UNC SCHOOL OF LAW

NORTH CAROLINA CIVIL RIGHTS LAW REVIEW

Volume 2 | Issue 1 Article 7

4-1-2022

Reliance on a Judicial Lifeline: *State v. Robinson* and North Carolina's Partisan Battle for the Racial Justice Act

Adreanna Sellers

RELIANCE ON A JUDICIAL LIFELINE: *STATE V. ROBINSON* AND NORTH CAROLINA'S PARTISAN BATTLE FOR THE RACIAL JUSTICE ACT

ADREANNA B. SELLERS*

INTRODUCTION 163
I. RJA HISTORY AND LEGISLATIVE INTENT 166
II. *STATE V. ROBINSON* 168
III. PROTECTION FROM DOUBLE JEOPARDY 170
IV. APPLYING THE PROTECTIONS TO ROBINSON'S CASE 172
CONCLUSION 174

INTRODUCTION

Nearly two and a half centuries after the founding of our republic, sections of the American public are finally beginning to understand, recognize, and address systemic racism and the shameful stain that has marked our nation since its inception. Even after the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution—which finally realized a constitutional guarantee of African Americans' most basic civil rights—many states continued to limit the political and social equality of Black Americans through Jim Crow laws passed specifically to re-entrench white supremacy.[1] Many laws disallowed Black individuals' service on juries.[2] Others diminished Black Americans' stake in representative government through voter suppression and racial

* J.D. Candidate, University of North Carolina School of Law, 2022. I would like to thank the editors and staff of the *North Carolina Civil Rights Law Review* for their thoughtful suggestions and edits. I am also eternally grateful to my family, friends, and professors for their encouragement and support.

[1] *See, e.g.,* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLOR BLINDNESS 29-31 (2010).

[2] *See* RICHARD WORMSER, THE RISE AND FALL OF JIM CROW 70 (2003).

gerrymandering.[3] The presence of racism in our political and legal processes is an enduring issue that our nation is continuously grappling with and working to remedy today.

Systemic racism has been particularly difficult to address in our nation's courts. In an attempt to address this problem in North Carolina's judicial system, the North Carolina General Assembly passed the Racial Justice Act (RJA) in 2009.[4] The RJA created an affirmative defense for individuals sentenced to death which dissolved the death sentence if the defendant could make a showing of racial bias in jury selection practices or in the application of the death penalty at the time of their sentence.[5] If a defendant could show that racial bias impacted their sentencing, they could serve life in prison without the possibility of parole instead of being put to death.[6] The RJA was one of the first of its kind in the country.[7] Today, California is the only other state with a similar law to protect criminal defendants from being put to death when racial bias infected the judicial process.[8]

The RJA was repealed by the newly-elected Republican majority in the North Carolina General Assembly in 2013.[9] This repeal was also expressly retroactive.[10] As a result, criminal defendants who had utilized the RJA to challenge their capital sentences were left in confusion. Marcus Reymond Robinson, a Black man who had been sentenced to death at the age of eighteen, was one of the individuals whose future was jeapordized by the partisan repeal of an Act which was meant to target the effects of discriminatory prosecution in the first place. In 2012, while the RJA was still

---

[3] *See* HENRY LOUIS GATES, JR., STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW 44-45 (2019).

[4] North Carolina Racial Justice Act, S.L. 2009-464, 2009 N.C. Sess. Laws 1213.

[5] State v. Robinson, 375 N.C. 173, 187 (2020).

[6] Act of June 19, 2013, S.L. 2013-151, § 5(a), 2013 N.C. Sess. Laws 368, 372.

[7] *See* Floyd B. McKissick Jr., N.C. Supreme Court's review of bias can continue state's progress on race of bias, News and Observer (March 12, 2018), https://www.newsobserver.com/opinion/op-ed/article204345389.html#storylink=cpy; *see also* Joseph Neff and Beth Schwartzapfel, New Hope for People Who Claim Racism Tainted Their Death Sentence, The Marshall Project (June 11, 2020), https://www.themarshallproject.org/2020/06/11/new-hope-for-people-who-claim-racism-tainted-their-death-sentence.

[8] California Racial Justice Act of 2020, ch. 317, sec. 1473 (2020).

[9] S.B. 306, Sess. 2013, (N.C. 2013).

[10] *See id*.

on the books, Robinson had been resentenced to life in prison and removed from death row. It was unclear how the repeal of the RJA would affect his resentencing. Robinson appealed to the North Carolina Supreme Court, arguing that the General Assembly's decision to make repeal of the RJA retroactive to cases already decided under the law violated his right against double jeopardy under the North Carolina Constitution.[11] In an opinion written by former Chief Justice Cheri Beasley, the Court agreed with Robinson, holding that the retroactivity provision of RJA's repeal violated Robinson's rights.[12] Robinson was then removed again from death row.

The decision of the Court is both powerful and damning. Why would the legislature want to make it harder for defendants to prove that there was racial bias in the criminal process that seeks to put them to death? Why, after Black defendants are able to show by a preponderance of the evidence in a court of law that racial bias did in fact impact their capital sentencing, did the legislature think it still appropriate to put these defendants to death?

The state's judiciary has emerged as one of the last safeguards for Black and brown people attempting to escape the often-deadly clenches of racist discrimination within our state's political systems. Our state's legislature, creating policy from an all-White caucus that seems apathetic to the lives of Black and brown North Carolinians,[13] bears down firmly and unfairly on criminal defendants in the state. Even when Black and brown individuals accused of a crime, criminal culpability aside, can prove that racial bias and systemic racist factors impacted their trial or sentencing, North Carolina's Republican General Assembly is intent on ensuring that these individuals are

---

[11] *Robinson*, 375 N.C. at 183 (2020).

[12] *Id*. at 192.

[13] The North Carolina General Assembly has been controlled by Republicans since 2010. *Gen. Assembly of N.C.*, BALLOTPEDIA, https://ballotpedia.org/General_Assembly_of_North_Carolina. Every member of the Republican caucus of the General Assembly in 2011, when the General Assembly first attempted to repeal the RJA, was White and the 25 representatives who were Black were also Democrats. *N.C. Gen. Assembly 2011 Senate Demographics,* OFFICE OF THE SENATE PRINCIPAL (Oct. 18, 2012), https://www.ncleg.gov/DocumentSites/SenateDocuments/2011-2012%20Session/2011%20Demographics.pdf; *149th Session 2011-2012 House of Representatives,* OFFICE OF THE HOUSE PRINCIPAL CLERK (Dec. 4, 2012), https://www.ncleg.gov/DocumentSites/HouseDocuments/2011-2012%20Session/2011%20Demographics.pdf; *see also* Gene Nichol, Indecent Assembly, 27 (2020).

put to death by the state.[14] It has taken a decade and a state supreme court that is committed to upholding justice, fairness, and equity to prevent the deaths of Mr. Robinson and many others.

I. RJA HISTORY AND LEGISLATIVE INTENT

In 1986, the U.S. Supreme Court decided *Batson v. Kentucky*, and held that prosecutors or defense attorneys using peremptory challenges to intentionally strike jurors because of their race violate both the Due Process and Equal Protection clauses of the 14th Amendment.[15] Since this decision, criminal defendants have been able to make *Batson* challenges to potentially discriminatory strikes of jurors. At the time of the *State v. Robinson* opinion however, the North Carolina Supreme Court had never applied the *Batson* rule to protect a criminal defendant from the discriminatory use of a peremptory strike by a prosecutor.[16] The Court finally recognized a *Batson* violation for the first time in 2022.[17]

In August of 2009, the North Carolina legislature enacted the Racial Justice Act (RJA) in an attempt to remedy the apparent failings of the North Carolina judiciary to shield criminal defendants from being put to death after a trial that was compromised by intentional racial discrimination.[18] The Act provided that "[n]o person shall be...given a sentence of death...pursuant to any judgment that was sought or obtained on the basis of race."[19]

The RJA provided defendants with several methods of establishing the existence of racial discrimination in their sentencing.[20] Courts could consider both statistical data and sworn testimony as evidence of racial bias in jury selection or in imposing the death penalty.[21] The defendant challenging their sentence bore the burden of proof.[22] The State could also use statistical

---

[14] *See* S.B. 306, 151st Gen. Assemb., 2013-2014 Session (N.C. 2013).

[15] Batson v. Kentucky, 476 U.S. 79 (1986).

[16] *Robinson*, 846 S.E.2d at 716.

[17] *See State v. Clegg*, 867 S.E.2d 885 (2022).

[18] *See Robinson*, 846 S.E.2d at 714.

[19] N.C. Gen. Stat. § 15A-2010 (2009) (repealed 2013).

[20] *Id.* § 15A-2011.

[21] *Id.* § 15A-2011(b).

[22] *Id.* § 15A-2011(c).

evidence to rebut the defendant's claim of racial bias.[23] If the defendant proved their case, he or she was then entitlted to a vacatur of their death sentence and then the resentencing of imprisonment for life without the possibility of parole.[24]

When the RJA was originally passed in 2009, the North Carolina legislature explicitly made the law's effects retroactive so that defendants on death row could take advantage of the RJA's new protections.[25] Defendants who had already been sentenced to death before the enactment of the RJA and who wished to challenge their sentence under the RJA had to file a motion for relief in their previously-closed criminal case within a year of the enactment of the RJA.[26]

Dissatisfied with the use of this statutory remedy created by the Democrat-controlled legislature, the North Carolina General Assembly, now controlled by Republicans, sought to make it harder for defendants to obtain relief. The legislature began its attempts to repeal the RJA in 2011.[27] However, the repeal was thwarted by Governor Beverly Perdue's veto.[28]

In 2012, the Republican North Carolina General Assembly tried again to thwart the RJA, this time by amending it.[29] The amendment changed the evidentiary standards by which defendants could prove racial discrimination in their trials.[30] The amendment required defendants to be much more specific in their showing of bias; instead of proving that racial bias existed in jury selection or the use of the death sentence in the entire state, judicial district, or county, the amended RJA required defendants to show that "race was a significant factor in decisions to seek or impose the sentence of death *in the county or prosecutorial district*" where the defendant was charged with a capitol crime or sentenced to death.[31] By requiring evidence of racial bias in a more narrow jurisdiction, defendants could not rely on more general, state-wide evidence of systemtic racism. Additionally, the amended RJA barred

---

[23] *Id.* § 15A-2011(c).

[24] *Id.* § 15A-2012(a)(3).

[25] 2009 N.C. Sess. Laws 1215.

[26] *Id*.

[27] *See* S.B. 9, 149th Gen. Assemb., 2011-2012 Session (N.C. 2011) (vetoed).

[28] *Id*.

[29] S.B. 416, Sess. 2011, (N.C. 2011).

[30] *Id.* § 15A-2011(a).

[31] *Id.* § 15A-2011(c) (emphasis added).

defendants from using statistics alone to prove racial bias in capital sentencing.[32] Defendants were further required to state the precise way that racial bias influenced their case or capital sentencing.[33] Taken together, the amendments to the RJA significantly increased defendants' burden of proof, making it far more difficult to prove their case and reverse their capital sentences.

Despite the difficulties imposed by the amended RJA, multiple defendants were nevertheless able to successfully challenge their criminal convictions under it. In reaction, the Republican-controlled General Assembly entirely repealed the RJA in 2013.[34] To more completely cut off relief under the Act, the General Assembly explicitly provided that the law's repeal applied retroactively to "any motion of appropriate relief" that had been filed under the RJA, including cases that had already been decided under the law.[35] Many assumed that the retroactivity provision in the repeal would effectively resentence defendants to death after their lives had been spared by the Act.

II. *STATE V. ROBINSON*

Marcus Reymond Robinson was one of the individuals most affected by the North Carolina legislature's decision to include a retroactivity provision in its repeal of the Racial Justice Act. In 1995, Marcus Robinson had been sentenced to death after a jury found him guilty of first-degree murder in Cumberland County, North Carolina.[36] Once sentenced, Robinson became the youngest person on death row in the state. He immediately began fighting the capital sentence in the courts. On direct appeal, in which Robinson did not raise the issue of racial bias, the North Carolina Supreme Court affirmed his sentence.[37] Over the next decade, Robinson made numerous claims of constitutional error, all of them ultimately unsuccessful in reversing his sentence to death.

Robinson was still living on North Carolina's death row in 2009, when the RJA was passed. In August of 2010, within the RJA's original period for

---

[32] *Id.* § 15A-2011(e).

[33] *Id.* § 15A-2011(d).

[34] S.B. 306, § 5(b) (N.C. 2013).

[35] *Id*. § 5(d).

[36] *See* State v. Robinson, 342 N.C. 74 (1995).

[37] *Id*. at 91.

challenging previous capital convictions and fifteen years after his original trial had concluded, Robinson filed a motion for appropriate relief under the RJA. His case was the first RJA suit to be considered on the merits of a racial bias claim.[38] Robinson successfully showed that racial bias had tainted his sentencing. Among the evidence presented was expert testimony from scholars at the Michigan State University College of Law scholars, who provided a thorough report on jury selection in the case.[39] The report demonstrated that, of the 7,400 jurors that the State might have struck in criminal cases across the state, prosecutors struck 56% of Black jurors, but struck jurors of other races at a rate of only 24.8%.[40] Additionally, of 173 capital proceedings conducted during that same period, seventy three proceeded before juries that were either all White or had only one Black juror.[41] Robinson also presented testimony from Bryan Stevenson—the legal director of the Equal Justice Initative and author of *Just Mercy*—as well as other legal scholars who specialize in studying the racial biases of our society and court system.[42] In light of this evidence, the court found that Robinson met his burden by demonstrating that race was a significant factor in North Carolina jury selection at the time of Robinson's capital trial and sentencing.[43] Under the RJA at the time,[44] the court order vacated Robinson's death sentence and re-sentenced him to life in prison without the possibility of parole.[45]

After the amendment, defendants still filed for relief under the Racial Justice Act. Similar to Robinson, Tilmon Golphin, Christina Walters, and Quintel Augustine were each convicted of first-degree murder and sentenced to death.[46] Each of them filed a motion for appropriate relief in August of

---

[38] State v. Robinson, No. 91-23143, at 28 (N.C. Super. Ct. Apr. 20, 2012) (order granting motion for appropriate relief).

[39] *Id.* at 44.

[40] *Id*. at 56, 59.

[41] *Id*. at 104.

[42] *See id*. at 8.

[43] *See id*. at 1.

[44] S.B. 416 *supra* note 23.

[45] *Robinson*, 375 N.C. at 167.

[46] State v. Golphin, No. 47314-15 (N.C. Super. Ct. Dec. 13, 2012) (order granting motion for appropriate relief).

2010, challenging their death sentences under the Racial Justice Act.[47] Golphin, Walters, and Augustine were able to meet their burden of proof to show that racial bias influenced jury selection in North Carolina at the time of their trials.[48] Thus, the Court ordered that they were entitled to relief under the Racial Justice Act. Golphin, Walters, and Augustine's death sentences were vacated, and they were each sentenced to life in prison without the possibility of parole.[49]

The amendments to the Racial Justice Act, although severe, did not prevent defendants from being successful in showing that racial bias affected their sentencing and the decision making of the prosecutors in their districts. Following Golphin, Walters, and Augustine's success under the RJA, the Act was repealed in 2013.[50] At a joint hearing, the Cumberland County Superior Court found that Robinson, Golphin, Walters, and Augustine's motions for appropriate relief were retroactively voided by the repeal of the Racial Justice Act.[51] Repeal of the law, in other words, left the RJA proceedings entirely without effect. This placed all of the defendants back on death row, their capital sentences reinstated. Robinson filed a writ of certiorari to the North Carolina Supreme Court claiming the reinstatement of his death sentence under the retroactivity provision of the Racial Justice Act's repeal law violated his right to be protected from double jeopardy under the North Carolina Constitution to be protected from double jeopardy.[52] That claim is the subject of the next section.

III. PROTECTION FROM DOUBLE JEOPARDY

Double jeopardy is one of the most well-known protections in American criminal law. The Double Jeopardy Clause is enshrined in the Fifth Amendment of the United States Constitution and applies to the states through the Fourteenth Amendment. [53] The protection from double jeopardy was included in the Bill of Rights to shield citizens from excessive prosecution or harassment by the government, which has the resources to

---

[47] *Id*. at 7-8.

[48] *Id*.

[49] *Id.* at 210.

[50] S.B. 306, § 5(b) (N.C. 2013).

[51] *Robinson*, 375 at 182.

[52] *Id.* at 183.

[53] Benton v. Maryland, 395 U.S. 784, 794 (1969).

doggedly pursue an individual with criminal charges.[54] The clause prohibits any person from being "twice put in jeopardy of life or limb" for the same offense.[55] This prohibition includes retrial for the same offense after the defendant has been acquitted,[56] retrial for the same offense after the defendant has been convicted,[57] and the imposition of multiple punishments for the defendant's same offense unless a legislature specifically authorizes such cumulative punishment.[58]

In North Carolina, the double jeopardy principle is not as expressly stated in the state constitution as it is in our federal constitution. The same double jeopardy protection nevertheless exists within the "Law of the Land" clause of the North Carolina constitution.[59] The "Law of the Land" doctrine holds that "[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land."[60] Although the federal double jeopardy principle applies here too because it was incorporated to the States by the Fourteenth Amendment, the North Carolina Supreme Court relies upon the North Carolina constitution's double jeopardy principle in this case.

A defendant may raise double jeopardy as a shield only after completing a first jeopardy, meaning their criminal case has culminated in a conviction or an acquittal.[61] If the State fails to prove their burden of guilt and the defendant is adjudged not guilty, the defendant has been acquitted of the charges. Once the defendant's trial results in a conviction or an acquittal, even if the acquittal is erroneous, the principle of double jeopardy protects the defendant from being retried or repunished for the same crime.[62] The same principle holds true in the context of capital sentencing hearings. At sentencing, the State must show that an aggravating circumstance existed in

---

[54] *See* Green v. United States, 355 U.S. 184, 187, 78 S.Ct. 122, 2 L.Ed.2d 76 (1957).

[55] U.S. CONST. amend. V.

[56] *See* Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970).

[57] *See* Brown v. Ohio, 432 U.S. 161, 168–169 (1977).

[58] *See* Missouri v. Hunter, 459 U.S. 359, 368-69 (1983).

[59] N.C. CONST. art. I, § 19; *see* State v. Sanderson, 488 S.E.2d 133, 136 (N.C. 1997).

[60] N.C. CONST. art. I, § 19.

[61] *See* State v. Sanderson, 488 S.E.2d 133, 136 (N.C. 1997).

[62] *See* Fong Foo v. United States, 369 U.S. 141, 142 (1962).

the commission of the crime in order to sentence the defendant to death.[63] Under the law of *State v. Sanderson*, North Carolina's double jeopardy protection also applies to capital sentencing proceedings "after there has been a finding that no aggravating circumstance is present."[64] If the State fails to demonstrate an aggravating circumstance at the capital sentencing proceeding, the State cannot secure a death sentence, and the defendant is considered to be acquitted of the death penalty.[65] The state cannot then re-try the defendant for death; the double jeopardy clause protects the defendant's acquittal from the capital sentence, just as it does his conviction of the underlying crime.

IV. APPLYING THE PROTECTIONS TO ROBINSON'S CASE

Robinson's writ to the North Carolina Supreme Court raised this double jeopardy principle as a defense against the legislature's attempt to make a repeal of the RJA retroactive to his case. At the trial court hearing on Robinson's claim, the trial court held that the RJA was not an ex post facto law but did not rule on whether Robinson's double jeopardy protection had been triggered.[66] Robinson appealed that decision to the North Carolina Supreme Court. The Supreme Court ruled that the trial court erred by not considering Robinson's claim that the relief he obtained in his suit brought under the RJA was an acquittal from a death sentence, and so he was protected from reconsideration under the double jeopardy clause.[67] The Court further explained that the Racial Justice Act provided criminal defendants with an affirmative defense against the death penalty and, when used successfully, resulted in an acquittal of the death pentalty.[68] Thus, once Robinson was acquitted of the death pentaly under the RJA, his right to be protected from double jeopardy shielded him from further punishment.[69] The decision effectively reverted Robinson's death sentence back to life in prison without the possibility of parole as provided by the Act.[70]

---

[63] *See Sanderson*, 488 S.E.2d at 137.

[64] *Id.* at 138.

[65] *Id*.

[66] State v. Robinson, 846 S.E.2d 711, 719 (2020).

[67] *Id.*

[68] *Id.* at 722.

[69] *Id*. at 719.

[70] *Id.*

The Court's decision was explained in part by reference to federal double jeopardy law. In her majority opinion, Chief Justice Beasley likened Robinson's case to *Burks v. United States*.[71] In *Burks*, the Supreme Court of the United States held that the double jeopardy clause of the Fifth Amendment prevented the federal government from trying the defendant a second time after the trial court determined that the government had failed to rebut Burks's affirmative defense of insanity.[72] Chief Justice Beasley reasoned that the intent of North Carolina's General Assembly in passing the RJA had been to provide defendants with an affirmative defense to a sentence of death. Just as in *Burks*, the State had the opportunity to rebut the affirmative defense.[73] But because Robinson made his showing of racial bias, proving that he was entitled to the affirmative defense, and because the State could not and did not rebut Robinson's showing, the Court held that Robinson's jeopardy had effectively terminated and could not be revisited without violating his constitutional rights.[74] The trial court even highlighted the State's failure to rebut Robinson's extensive showing of racial bias in North Carolina's prosecutorial system.[75] It had simply not followed that observation through to its legal ramifications. Since Robinson's evidentiary proffer was sufficient and the State failed to rebut it, he had been acquitted from the death penalty. Any re-sentencing would then subject Robinson to double jeopardy and violate his constitutional rights.[76]

Chief Justice Beasley's opinion for the Court sharply criticized the law that created the mess. The opinion observed that the General Assembly, through statutory fiat, sought to resentence Robinson and other defendants to death, even after those individuals had demonstrated that racial bias existed in jury selection at the time of their capital sentencing, and despite the State's inability to rebut that showing.[77] The Court's opinion also pointed to the historic rationale of the double jeopardy principle itself, noting "[i]f our constitution does not permit the State to use its power and resources over and over to . . . impose the death penalty, it certainly does not allow the state to

---

[71] *Id.* at 722 (referencing Burks v. United States, 437 U.S. 1 (1978)).

[72] Burks v. United States, 437 U.S. 1, 1 (1978).

[73] *Robinson* at 722.

[74] *Id.* at 719.

[75] *Id.* at 718.

[76] *Id.* at 722.

[77] *Id.* at 723.

use that same power and resources to eliminate the remedy after a defendant has successfully proven his entitlement to that relief."[78] This decision reinstates Robinson's life sentence and ensures him of the protection of life and liberty that were violated by the General Assembly's unconstitutional move.[79]

CONCLUSION

Robinson should be lauded for championing age-old constitutional principles that protect criminal defendants' most basic and essential rights. But there is also much more to be desired here. The Racial Justice Act, hailed as a novel, progressive statutory move by North Carolina's legislature, still allowed defendants who can prove that racist discrimination touched their trials to spend their lives in prison without the possibility of parole.

Additionally, the RJA is no longer good law in North Carolina. Consistent with a problematic and troubling historical trend, the North Carolina General Assembly, controlled by an all-White, Republican supermajority, amended and then repealed this imperfect but important statutory remedy for defendants whose criminal trials may have been irredemibly compromised by racist tactics in jury selection and the imposition of capital sentences. As a result, Marcus Robinson had been imprisoned for nearly thirty years. Defendants currently on death row with potentially successful claims of racial discrimination in their trials must now rely on *Batson* challenges, which notably has only ever been successfully used in North Carolina once.[80]

The dearth of opportunities for relief for imprisoned individuals exacerbates the already troubling state of North Carolina's death row. North Carolina has the sixth largest death row in the United States.[81] More than 40% of people living on death row in the United States are Black, and in North Carolina that percentage rises to 53%.[82] In creating the Racial Justice Act, the North Carolina legislature was, in part, recognizing and responding to the

---

[78] *Id.*

[79] *Id*.

[80] *Clegg*, *supra* note 17.

[81] *Death Row Prisoners by State: July 1, 2020,* DEATH PENALTY INFO. CTR., Dec. 14, 2020 https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1608589384.pdf.

[82] *Id*.

racial inequalities of capital punishment in North Carolina.[83] Once the North Carolina General Assembly did not like the way that individuals were using the remedies that the RJA gave them, they simply eliminated the remedy. The North Carolina Supreme Court had to step in to keep the legislature's actions from infringing upon the rights of Robinson and many other who sought refuge under the Act.

The power and potential of our judicial systems to not only create vast and sweeping societal change but also to uphold life-saving protections is clear. With each passing election cycle, the North Carolina Supreme Court's justices, each of them enacting their own unique and changing judicial philosophy, may shift. The racial disparities that we see in access to justice and to our political systems persist in North Carolina. The first Black woman to serve as Chief Justice of the North Carolina Supreme Court, who wrote this opinion, lost her seat in the 2020 election. Two NC Supreme Court seats are on the ballot in 2022, and they have the potential to completely reverse the partisan and ideological control of the Court for years to come. *Robinson* illustrates the importance of the preservation of individual and civil rights, but it is just as important to preserve the historically-contextualized and socially-conscious rationale that produced *Robinson.* For now, the Court was able to use its power as a shield to successfully twart racist legislative behavior and protect Mr. Robinson's rights. As the Court shifts, its power may be used to impact the future of the death penalty in North Carolina for decades to come.

[83] North Carolina Racial Justice Act, S.L. 2009-464, 2009 N.C. Sess. Laws 1213.