

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-K-426

STATE OF LOUISIANA

versus

CLYDE MADERE

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE FORTIETH JUDICIAL DISTRICT
COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 23,133, DIVISION "A"
HONORABLE VERCELL FIFFIE, JUDGE PRESIDING

September 29, 2026

MARC E. JOHNSON
JUDGE

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED

MEJ

CONCURS WITH REASONS

SUS

DISSENTS WITH REASONS

JJM



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JOHNSON, J.

Relator, the State of Louisiana, seeks expedited review of the 40th Judicial District Court’s September 8, 2026 ruling denying its Motion to Reallot Case No. 2023-CR-133, *State v. Clyde Madere, Jr.*, to another division of that court pursuant to La. C.Cr.P. article 780(B). Because we find 1) the operative text of Louisiana Code of Criminal Procedure Article 780(B)(2) confirms that case reassignment is triggered only by a motion made “pursuant to [this] Paragraph,” which necessarily requires effectiveness before it can operate; and (2) it cannot apply to the State’s motion, filed and granted before the amendment’s August 1, 2026 effective date, we deny the writ.

FACTS AND PROCEDURAL HISTORY

Defendant is charged with one count of second degree murder, in violation of La. R.S. 14:30.1, and one count of distribution of fentanyl, in violation of La. R.S. 40:967(A)(1). In April 2026, Defendant filed a motion to waive jury trial and the district court granted his motion. On or around August 4, 2026, the State filed a Motion to Reallot a few days after Subparagraph (B)(2) of La. C.Cr.P. art. 780 became effective; the trial court denied the motion after a hearing on September 8, 2026. In its subsequent Supplemental Reasons for Judgment – Regarding Denial of State’s Motion to Reallot, the district court explained “[t]he statutory text makes the filing of the jury waiver motion the operative event” and Defendant’s motion was filed months before the subject statutory procedure existed. The State filed its (unsigned) Notice of Intent and Motion to Stay, and writ application with this court the next day.

ASSIGNMENT OF ERROR

The State argues the district court erred when it denied its motion and refused to randomly reallocate Defendant's case, originally assigned to Division "A", to one of the other two divisions of the 40th Judicial District Court, pursuant to La. C.Cr.P. art. 780 B(2). The State argues that the change made was procedural and not substantive, and therefore, the new law should apply prospectively as well as retroactively, and retroactive application of the law does not prejudice Defendant's right to a judge trial. Defendant counters the amended article does not authorize delayed reallocation and his waiver of trial by jury was granted months before the amended article took effect, and retroactive application "would improperly alter the legal consequences of an act that was completed and adjudicated before the amendment became effective".

LAW AND DISCUSSION

Subsection B(2) of La. C.Cr.P. art. 780, amended in the 2026 Regular Session by Acts 2026, No. 541, §1(H.B. 310), provides:

(2) If a defendant files a motion [to waive a jury trial] **pursuant to this Paragraph** in a district court with three or more judges who are assigned criminal matters within respective divisions or sections, the case shall be randomly reassigned among the remaining judges who are assigned criminal matters within all divisions or sections immediately following the filing of the motion.

(Emphasis added). The command is clear: reassignment follows only upon the filing of a motion to waive a jury trial that is "pursuant to this Paragraph," *i.e.*, Article 780(B)(2) itself. Until the amendment became effective, no motion to waive a jury trial could be filed "pursuant to" it. Further, the State's motion to reallocate subsequently filed after the paragraph's effective date cannot be used to circumvent the paragraph's

temporal element that, when satisfied, will lead to a case’s immediate reallocation.

When a law is clear and unambiguous, and its application does not lead to absurd consequences, it must be applied as written, without further inquiry into legislative intent. *See* La. C.C. art. 9. Applying the statutory text as written, Article 780(B)(2)’s reassignment mechanism is not triggered by a motion filed before the amendment’s effective date, because such a motion was not filed “pursuant to this Paragraph.”

Here, the filing date is dispositive. The statutory text attaches reassignment to “the filing of the motion,” and it requires that the motion be filed “pursuant to this Paragraph.” Article 780(B)(2) became effective on August 1, 2026. Defendant filed his motion to waive a jury trial on April 17, 2026. The trial court granted the motion on April 27, 2026. Because both the filing and the granting of the motion occurred before August 1, 2026, Defendant’s motion was not made “pursuant to this Paragraph [Article 780(B)(2)],” and the reassignment provision in the article is inapplicable.

Also, the phrase “immediately following the filing of the motion” does not expand the statute’s reach; it prescribes the timing of reassignment once the threshold condition—a qualifying filing after effectiveness, as of August 1, 2026—is met. That condition was not met here. A pre-effective-date filing cannot satisfy the article’s requirement.

Further, the quoted phrase “pursuant to this Paragraph” also indicates prospective operation: the legislature chose language that makes the Paragraph’s own effectiveness a prerequisite to its application. In our opinion, the inclusion of the quoted phrase in Article 780(B)(2)

distinguishes the instant matter from *State v. Washington*, 02-2196, p. 2 (La. 9/13/02), 830 So.2d 288, 289–90. In *Washington*, the defendant filed a motion to have his case reassigned to the ad hoc judge who heard the motion to recuse the original judge. However, the language of the article at issue, La. C.Cr.P. art. 676, indicated no conditions for its application.¹ To the extent the State argues that Article 780(B)(2) should apply to pending cases, the argument fails where, as here, the triggering event—the filing of the motion—occurred before the effective date of the amendment. Nothing in the text authorizes retroactive reassignment based on pre-effective-date filings and reading that authority into Article 780(B)(2) would contradict the statute’s express condition that the motion be filed “pursuant to this Paragraph.” On the other hand, the amended article in *Washington* contains no such language implying any temporal restriction of the application of the procedural law, which admittedly, is typically retroactively, as well as prospectively, applied.

Lastly, “[w]hen a defendant waives trial by jury in accordance with this Article and the waiver results in reassignment, the filing of that waiver shall constitute an interruption of the time periods provided in

¹ In *Washington*, the Supreme Court explained the change in law as follows:

La.Code Crim. Proc. art. 676(B), as amended by Acts 2001, No. 417, § 2. Article 676(B), in relevant part, now provides:

When a district court judge or a judge of a separate juvenile court or of a family court is recused after a trial of the motion, the matter shall be reassigned to another judge for trial of the case in accordance with the procedures contained in Code of Criminal Procedure Article 675.

Article 675 reads, in pertinent part:

B. In a court having more than two judges, the motion to recuse shall be referred to another judge of the court through a random process as provided by the rules of court.

Washington, supra.

Article 701, and the time periods shall begin to run anew.” La. C.Cr.P. art. 780(B)(4). Applying Article 780(B)(2) and (4) retroactively to motions to waive jury trial already filed and granted would needlessly delay adjudication by authorizing reassignment in cases that have already progressed under the originally assigned judge; that outcome would be a disservice to judicial economy. But, most importantly, the application of Article 780 as amended would reset the tolling of the period during which Defendant’s trial must commence. *See* La. C.Cr.P. arts. 780(B)(4) and 701(B). Here, finding Article 780 as amended should be applied retroactively to this matter would not be prejudicial to Defendant’s right to a bench trial, but it would certainly be an infringement on his right to a speedy trial.²

In sum, we agree with the State and the dissent’s assertion that the defendant is not entitled to have his case adjudicated in a particular section of court or heard by a particular judge. But the plain language of the statute in question prohibits its retroactive application. Because Article 780(B)(2) does not apply to Defendant’s pre-effective-date motion, and the subsequent order granting the waiver, we find that the reassignment mechanism was never triggered.

DECREE

Considering the foregoing, the writ is denied. The provisions of Article 780(B) are triggered by a motion to waive jury filed by a defendant. Here, the paragraph has a temporal element that passed

² Defendant was arrested in 2023. If Article 780 is applied retroactively to Defendant’s case, the current October 6, 2026 trial date would have to be reset within the availability of another judge’s preset docket. When considering the docketing issues and the possibility of other pre-trial filings before the reassigned judge, Defendant’s trial could be delayed several more months due to no fault of his own.

when Defendant filed his motion to waive jury (before the paragraph's effective date); it cannot be revived by the State's subsequent motion to reallot. The matter is remanded for further proceedings.

WRIT DENIED

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SCHLEGEL, J., CONCURS WITH REASONS

This matter presents a question of first impression. The two competing arguments posited by both defendant and the State have some merit. However, after considering the specific facts of this particular case, I concur. The writ should be denied.

Although I agree that a defendant has no vested or protected interest in remaining before a particular judge or division and that the amendment to Louisiana Code of Criminal Procedure Article 780(B) is procedural and could be applied to this case retroactively, the new time element of Article 780(B)(2) cannot be met here. The qualifying motion at issue which could have triggered the requirement of immediate reassignment was filed months before the effective date of Act No. 541 (2026). The State's filing of its own motion to reallocate months after the fact on August 4, 2026 cannot create a new event that would set in motion the mandates of the amended Article 780(B)(2), i.e. an immediate reassignment. "[T]his paragraph" has a temporal element that passed when defendant filed his motion to waive the jury, and it cannot be revived. Further, Article 780(B)(2) only applies to motions filed by the defense, not to motions filed by the State.

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MOLAISON J., DISSENTS WITH REASONS

I respectfully dissent from the majority's disposition to deny the State's writ, for the following reasons.

Procedural Posture and Limited Record

The writ application reflects that the State charged the defendant, Clyde Madere, in the Fortieth Judicial District Court with one count of second degree murder, a violation of La. R.S. 14:30.1, and one count of distribution of a controlled dangerous substance, in violation of La. R.S. 40:967 A(1). On April 27, 2026, the district court granted Mr. Madere's motion to waive a jury trial pursuant to La. C.Cr.P. art. 780. On August 3, 2026, the State moved to reallocate the case from Division "A," invoking La. C.Cr.P. art. 780(B)(2), which became effective August 1, 2026. On September 8, 2026, the district court denied the State's motion, finding that Article 780 is not retroactive. The application indicates a current trial setting during the week of October 6, 2026, and the State requests expedited consideration. The record before us is limited and contains no additional transcripts or exhibits beyond minute entries and the parties' filings.

Standard of Review

Questions of law are reviewed *de novo* for legal correctness. *McClanahan v. McClanahan*, 14-670 (La. App. 5 Cir. 3/25/15), 169 So. 3d 587, 591, *citing Wooley v. Lucksinger*, 06-1140 (La. App. 1 Cir. 12/30/08), 14 So.3d 311, 335.

Law and analysis

Effective August 1, 2026, La. C.Cr.P. art. 780(B)(2) provides, in relevant part:

If a defendant files a motion pursuant to this Paragraph in a district court with three or more judges who are assigned criminal matters within respective divisions or sections, the case shall be randomly reassigned among the remaining judges who are assigned criminal matters within all divisions or sections immediately following the filing of the motion.

As can be seen, Article 780(B)(2) uses mandatory language— “shall” and “immediately”—and directs random reassignment among “the remaining judges who are assigned criminal matters within all divisions or sections.”

Retroactivity Framework

Under Louisiana retroactivity jurisprudence, courts first resolve the *Planiol*³ threshold: a law operates retroactively only if it “goes back to the past to evaluate the legality of a past act” or “modifies or suppresses the effects of a right already acquired.” Applying Article 780(B)(2) here does not “go back to the past to evaluate the legality of a past act” because reassignment is keyed to a present procedural filing and operates immediately thereafter. It also does not “modify or suppress” any acquired right. As will be discussed more fully, the defendant’s earlier jury waiver determines the *mode* of trial, not entitlement to adjudication by any particular judge or division. Thus, application of Article 780(B)(2) is prospective under the *Planiol* threshold, and our retroactivity analysis could end here. Stated another way, applying Article 780(B)(2) to a motion filed after its effective date is not retroactive in effect because it governs a present procedural step.

I reach the same conclusion applying the criteria of La. C.C. art. 6.

Application of La. Civ. Code art. 6

La. C.C. art. 6 provides that in the absence of contrary legislative expression, substantive laws apply prospectively only, while procedural and interpretive laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary. I find it evident from the statute itself that there is no legislative expression restricting application of Article 780(B)(2) to future filed cases. Because La. C.Cr.P. art. 780(B)(2) does not contain any express statement regarding whether the new provision applies retroactively to cases already pending at the time of the August 1, 2026 effective date, we must determine whether the amendment is substantive, procedural, or interpretive. Substantive laws are those that impose new duties, obligations, or responsibilities upon parties, or that establish new rules, rights, and duties or change existing ones. *State v. Guerra*, 03-1071 (La. App. 5 Cir. 12/30/03), 865 So.2d 154, 156. Procedural laws prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of laws. *Id.*

The Procedural Nature of Assignment/Reallotment

State v. Washington, 02-2196 (La. 9/13/02), 830 So.2d 288 (per curiam), treated the reallotment mechanism in former La. C.Cr.P. art. 676 as procedural and applied the amended assignment rule to a motion filed after the amendment’s effective date even though the underlying recusal predated the amendment. *Adams v. City of Baton Rouge*, 95-2515 (La. App. 1 Cir. 4/30/96), 673 So.2d 624, 635, *writs denied*, 96-1491, 96-1492 (La. 9/20/96), 679 So.2d 439, held that statutory changes governing whether an action is tried by judge or jury address the mode or means of trial, are procedural, do not affect vested rights, and may apply

³ This preliminary inquiry derives from the *Planiol* formulation used by the Louisiana Supreme Court in *Walls v. American Optical Corp.*, 98-0455 (La. 9/8/99), 740 So.2d 1262, 1266, and applied in *Church Mutual Ins. Co. v. Dardar*, 13-2351 (La. 5/7/14), 145 So.3d 271, 278-79.

retroactively. The Louisiana Supreme Court has also explained that a criminal defendant has no right to have his case heard by a particular judge and that due process is not denied by an error in judge selection, absent a showing of prejudice. *State v. Cooper*, 10-2344 (La. 11/16/10), 50 So.3d 115, 131.

I find that *Washington* is directly controlling. There, the Louisiana Supreme Court held that amended Article 676(B)—which, like Article 780(B)(2), mandates the random reallocation of a criminal case—is procedural and applies to a case pending on its effective date where the Legislature has expressed no contrary intent because reallocation prescribes the method by which a case proceeds rather than creating, enlarging, or divesting any substantive right. The materially identical reassignment directive in Article 780(B)(2) is procedural for the same reason. *Adams* is persuasive to the same effect: a provision fixing the mode or means of trial addresses “the machinery, as distinguished from its product” and is therefore procedural; that it arises in the civil context does not diminish its reasoning. And *Cooper* forecloses the only substantive interest the defendant could assert against reassignment, holding that a criminal defendant has no right to have his case heard by a particular judge. Together, these authorities establish that Article 780(B)(2)’s reassignment directive governs court administration upon a qualifying filing and applies when, as here, the motion is filed after the effective date, notwithstanding antecedent events such as a pre-effective-date jury waiver.

As a procedural law, La. C.Cr.P. art. 780(B)(2) is applied both prospectively and retroactively.

The Statutory Trigger

The defendant’s jury-waiver motion in this case was granted on April 27, 2026, before the effective date, while the State’s motion to reallocate was filed on August 3, 2026, after it. Reassignment is required on either reading of the statutory trigger.

First, the operative trigger is the State’s August 3 motion. Paragraph B(2) directs that a case “be randomly reassigned . . . immediately following the filing of the motion,” and no filing could invoke that reassignment mechanism before it existed. The April 27 waiver was made under a different provision; it fixed the mode of trial but neither requested nor could have set in motion the B(2) reassignment directive, which took effect only on August 1, 2026. The State’s post-effective-date motion is thus the first—and only—filing capable of invoking Paragraph B(2), and the statute operates prospectively when applied to it.

Second, even if the defendant’s jury-waiver motion were treated as the triggering motion, the result is the same. As *Washington* holds, a reallocation provision is procedural and governs cases pending on its effective date absent contrary legislative intent. Article 780(B)(2) would therefore require reassignment on remand even if the waiver were the operative filing because a procedural change applies to the pending proceeding regardless of when the antecedent waiver occurred. Under either construction, the statute’s command is triggered here.

The Defendant’s Opposition

In his opposition to the State’s motion, the defendant argued that the pre-effective-date waiver fixed the division and judge who would preside over his case.

The argument fails for two independent reasons. First, the defendant's April 27, 2026 jury waiver did not vest a right to adjudication by a particular division; it selected only the mode of trial, and *Cooper* forecloses any right to a particular judge. While *Adams* recognizes that a right, once vested, may not be retroactively divested, no vested right is disturbed here; reassignment leaves the defendant's bench-trial election wholly intact and alters only which judge conducts that trial—precisely the administrative circumstance *Cooper* holds implicates no protected interest. Second, Article 780(B)(2) governs reassignment upon a qualifying filing and does not depend on when the waiver occurred. Finally, the defendant has identified no prejudice from reassignment, and none is apparent on this record; *Cooper* requires a showing of prejudice before an error in judge selection offends due process. Any scheduling impact is an administrative matter the receiving court can address on remand.

Conclusion

I find that because La. C.Cr.P. art. 780(B)(2) keys reassignment to the filing of a qualifying motion and the State's motion was filed on August 3, 2026, after the statute's August 1, 2026 effective date, reassignment is required. That result does not depend on any single characterization of the trigger; because the reassignment directive is procedural under *Washington*, it governs this pending case and compels the same result even if the defendant's earlier waiver were treated as the operative motion. I would remand with instructions to randomly reassign this case among the remaining judges who are assigned criminal matters within all divisions or sections of the Fortieth Judicial District Court in accordance with La. C.Cr.P. art. 780(B)(2). On remand, the receiving court could adjust existing settings as necessary to accommodate random reassignment consistent with docket-management needs.

For these reasons, I dissent.

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
SEPTEMBER 29, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL
PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-K-426

E-NOTIFIED

40TH DISTRICT COURT (CLERK)
HONORABLE VERCELL FIFFIE (DISTRICT JUDGE)
VERCELL FIFFIE (RELATOR)
DANIEL E. BECNEL, III (RESPONDENT)

ANTHONY J. IBERT (RELATOR)
KATHRYN W. BECNEL (RESPONDENT)

BRIDGET A. DINVAUT (RELATOR)
JOHNAE J. JONES (RESPONDENT)

MAILED

NO ATTORNEYS WERE MAILED