No. _____

IN THE

Supreme Court of the United States

GARY LAWRENCE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITIONER'S APPENDIX

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INDEX TO APPENDIX

EXHIBIT 1

Supreme Court of Florida

No. SC17-1442

GARY LAWRENCE,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[February 2, 2018]

PER CURIAM.

We have for review Gary Lawrence's appeal of the circuit court's order denying his motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Lawrence's motion sought relief pursuant to the United States Supreme Court's decision in Hurst v. Florida, 136 S. Ct. 616 (2016), and our decision on remand in Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). This Court stayed Lawrence's appeal pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017).

After this Court decided Hitchcock, Lawrence responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Lawrence's response to the order to show cause, as well as the State's arguments in reply, we conclude that Lawrence is not entitled to relief. Lawrence was sentenced to death following a jury's recommendation for death by a vote of nine to three. Lawrence v. State, 698 So. 2d 1219, 1221 (Fla. 1997). His sentence of death became final in 1998. Lawrence v. Florida, 522 U.S. 1080 (1998). Thus, Hurst does not apply retroactively to Lawrence's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Lawrence's motion.

The Court having carefully considered all arguments raised by Lawrence, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.
PARIENTE, J., concurs in result with an opinion.
LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

An Appeal from the Circuit Court in and for Santa Rosa County,
David Rimmer, Judge - Case No. 571994CF000397XXAXMX

Robert S. Friedman, Capital Collateral Regional Counsel, Stacy R. Biggart, Assistant Capital Collateral Regional Counsel, Northern Region, Tallahassee, Florida; and Billy H. Nolas, Chief, Capital Habeas Unit, Office of the Federal Public Defender, Northern District of Florida, Tallahassee, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida,

for Appellee

EXHIBIT 2

Filing # 62046145 E-Filed 09/27/2017 09:56:48 AM

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 27, 2017

CASE NO.: SC17-1442
Lower Tribunal No(s).:
571994CF000397XXAXMX

GARY LAWRENCE vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Appellant shall show cause on or before Tuesday, October 17, 2017, why the trial court's order should not be affirmed in light of this Court's decision Hitchcock v. State, SC17-445. The response shall be limited to no more than 20 pages. Appellee may file a reply on or before Wednesday, November 1, 2017, limited to no more than 15 pages. Appellant may file a reply to the Appellee's reply on or before Monday, November 13, 2017, limited to no more than 10 pages.

Motions for extensions of time will not be considered unless due to a medical emergency.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

lc
Served:

BILLY H. NOLAS
ALICE B. COPEK
CHARMAINE M. MILLSAPS

EXHIBIT 3

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **Case No: 1994-CF-0397**

GARY LAWRENCE,

Defendant.

ORDER DENYING DEFENDANT'S
SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE is before the Court after case management conferences held on May 3, 2017, and June 28, 2017, on Defendant's Successive Rule 3.851 Motion for Post-Conviction Relief in Light of *Hurst v. Florida* and *Hurst v. State* filed by and through counsel on April 5, 2017, pursuant to Florida Rule of Criminal Procedure 3.851. Having considered Defendant's motion, the State's answer, Defendant's reply, the arguments presented at the case management conferences, the record, and applicable law, the Court finds that Defendant's motion should be denied. Because his sentence became final in 1998, Defendant is not entitled to relief under *Hurst v. Florida*, 136 S. Ct. 616 (2016), or *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *See Lawrence v. State*, 698 So. 2d 1219 (Fla. 1997), *cert. denied*, 522 U.S. 1080 (1998); *Asay v. State*, 210 So. 3d 1, 17-22 (Fla. 2016) (holding that *Hurst v. Florida* and *Hurst v. State* do not apply retroactively to cases that became final before the United States Supreme Court decided *Ring v. Arizona*, 536 U.S. 584 (2002)).

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Successive Rule 3.851 Motion for Post-Conviction Relief in Light of *Hurst v. Florida* and *Hurst v. State* is **DENIED**. Defendant has the right to appeal within 30 days of the rendition of this order.

DONE AND ORDERED in Chambers at the Santa Rosa County Courthouse, Milton, Florida.

eSigned by DAVID RIMMER 07/02/2017 13:55:17 M6.dP6oN

DAVID RIMMER
CIRCUIT JUDGE

DR/cl

[CERTIFICATE OF SERVICE ON NEXT PAGE]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order Denying Defendant's Successive Motion for Postconviction Relief was furnished by e-Service (unless otherwise indicated) to:

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this 7th day of July, 2017.

clerk

DONALD C. SPENCER, Clerk of Court

BY: Cody Wilkerson
Deputy Clerk

EXHIBIT 4

No. SC17-1442

IN THE

Supreme Court of Florida

GARY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S BRIEF IN RESPONSE TO SEPTEMBER 27, 2017 ORDER TO SHOW CAUSE

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INTRODUCTION

Appellant's death sentence was imposed pursuant to a capital sentencing scheme that was ruled unconstitutional by the United States Supreme Court in *Hurst v. Florida*, 136 S. Ct. 616 (2016), and this Court in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The issue in this case is whether this Court will continue to apply its unconstitutional "retroactivity cutoff" to deny Appellant *Hurst* relief on the ground that his sentence did not become final at least one day after the 2002 decision in *Ring v. Arizona*, 536 U.S. 584 (2002).

This Court has already applied *Hurst* retroactively as a matter of state law and granted relief in dozens of collateral-review cases where the defendant's sentence became final after *Ring*. But the Court has never addressed *Hurst* retroactivity as a matter of federal law, and the Court has consistently applied a state-law cutoff at the date *Ring* was decided—June 24, 2002—to deny relief in dozens of other collateral review cases. The *Ring*-based cutoff is unconstitutional and should not be applied to Appellant. Denying Appellant *Hurst* relief because his sentence became final in 1998, rather than some date between 2002 and 2016, would violate the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Appellant is entitled to *Hurst* retroactivity as a matter of federal law.

The circuit court's order should not be affirmed in light of *Hitchcock v. State*, No. SC17-445, 2017 WL 3431500 (Fla. Aug. 10, 2017). There is a petition for a

writ of certiorari pending in *Hitchcock* (No. 17-6180). The Court should wait for the Supreme Court to address the petition before deciding Appellant's case.

REQUEST FOR ORAL ARGUMENT AND FULL BRIEFING

This appeal presents an important issue of first impression: whether federal law requires this Court to extend *Hurst* retroactivity to death sentences that became final before *Ring*, rather than cabining *Hurst* relief to only post-*Ring* death sentences. Appellant respectfully requests oral argument on this and related issues pursuant to Fla. R. App. P. 9.320. Appellant also requests that the Court permit full briefing in this case in accord with the normal, untruncated rules of appellate practice.

Depriving Appellant the opportunity for full briefing in this case would constitute an arbitrary deprivation of the vested state right to a mandatory plenary appeal in capital cases. *See Doty v. State*, 170 So. 3d 731, 733 (Fla. 2015) ("[T]his Court has a mandatory obligation to review all death penalty cases to ensure that the death sentence is imposed in accordance with constitutional and statutory directives."); *See also Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Hicks v. Oklahoma*, 447 U.S. 343 (1980).

ARGUMENT

I. Appellant's death sentence violates *Hurst*, and the error is not "harmless"

Appellant was sentenced to death pursuant to a Florida scheme that has been ruled unconstitutional by the United States Supreme Court and this Court. In *Hurst*

v. Florida, the United States Supreme Court held that Florida's scheme violated the Sixth Amendment because it required the judge, not the jury, to make the findings of fact required to impose the death penalty under Florida law. 136 S. Ct. at 620-22. Those findings included: (1) the aggravating factors that were proven beyond a reasonable doubt; (2) whether those aggravators were "sufficient" to justify the death penalty; and (3) whether those aggravators outweighed the mitigation. Under Florida's unconstitutional scheme, an "advisory" jury rendered a generalized recommendation for life or death by a majority vote, without specifying the factual basis for the recommendation, and then the sentencing judge alone, notwithstanding the jury's recommendation, conducted the fact-finding. *Id.* at 622. In striking down that scheme, the United States Supreme Court held that the jury, not the judge, must make the findings of fact required to impose the death penalty. *Id.*

On remand in *Hurst v. State*, this Court applied the holding of *Hurst v. Florida*, and further held that the Eighth Amendment requires *unanimous* jury fact-finding as to each of the required elements, and also a *unanimous* recommendation by the jury to impose the death penalty. 202 So. 3d at 53-59. In addition, the Court noted that, even if the jury unanimously finds that each of the required elements is satisfied, the jury is not required to recommend the death penalty, and the judge is not required to sentence the defendant to death. *Id.* at 57-58.

Appellant's jury was never asked to make unanimous findings of fact as to any of the required elements. Instead, after being instructed that its decision was advisory, and that the ultimate responsibility for imposing a death sentence rested with the judge, the jury rendered a non-unanimous, generalized recommendation that the judge sentence Appellant to death. The record does not reveal whether Appellant's jurors unanimously agreed that any particular aggravating factor had been proven beyond a reasonable doubt, or unanimously agreed that the aggravators were sufficient for death, or unanimously agreed that the aggravators outweighed the mitigation. But the record *is* clear that Appellant's jurors were not unanimous as to whether the death penalty should even be recommended to the court.

The "harmless error" doctrine does not apply to the *Hurst* error in Appellant's case because his pre-*Hurst* jury recommended the death penalty by a vote of 9 to 3. This Court's precedent makes clear that *Hurst* errors are not harmless where the defendant's pre-*Hurst* jury recommended death by a non-unanimous vote. *Dubose v. State*, 210 So. 3d 641, 657 (Fla. 2017) ("[I]n cases where the jury makes a non-unanimous recommendation of death, the *Hurst* error is not harmless."). This Court has declined to apply the harmless error doctrine in every case where the pre-*Hurst* jury's recommendation was not unanimous.[1]

[1] *See, e.g.*, *Bailey v. Jones*, No. SC17-433, 2017 WL 2874121, at *1 (Fla. July 6, 2017) (11-1 jury vote); *Hertz v. Jones*, 218 So. 3d 428, 431-32 (Fla. 2017) (10-2 jury vote); *Hernandez v. Jones*, 217 So. 3d 1032, 1033 (Fla. 2017) (11-1 jury vote);

To the extent any of the aggravators applied to Appellant were based on prior convictions, the judge's finding of such aggravators does not render the *Hurst* error harmless. Even if the jury would have found the same aggravators, Florida law does not authorize death sentences based on the mere existence of an aggravator. As noted above, Florida law requires fact-finding as to both the existence of aggravators *and* the "sufficiency" of the particular aggravators to warrant imposition of the death penalty. There is no way to conclude whether the jury would have made the same sufficiency determination as the judge. That is why this Court has consistently rejected the idea that a judge's finding of prior-conviction aggravators is relevant in the harmless-error analysis of *Hurst* claims, and has granted *Hurst* relief despite the presence of such aggravators. *See, e.g.*, *Franklin v. State,* 209 So. 3d 1241, 1248 (Fla. 2016) (rejecting "the State's contention that Franklin's prior convictions for other violent felonies insulate Franklin's death sentence from *Ring* and *Hurst*").[2]

Caylor v. State, 218 So. 3d 416, 425 (Fla. 2017) (8-4 jury vote); *Card v. Jones*, 219 So. 3d 47, 48 (Fla. 2017) (11-1 jury vote); *McMillian v. State*, 214 So. 3d 1274, 1289 (Fla. 2017) (10-2 jury vote); *Durousseau v. State*, 218 So. 3d 405, 414-15 (Fla. Jan. 31, 2017) (10-2 jury vote).

[2] Moreover, although this Court's state-law precedent is sufficient to resolve any harmless-error inquiry in this case, it should be noted that the United States Constitution precludes application of the harmless error doctrine because any attempt to discern what a jury in a constitutional proceeding would have decided would be impermissibly speculative. *See, e.g.*, *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985) (explaining that a jury's belief about its role in death sentencing can materially affect its decision-making); *Sullivan v. Louisiana*, 508 U.S. 275, 279-

II. This Court's "retroactivity cutoff" at *Ring* is unconstitutional and should not be applied to Appellant

This Court has already applied *Hurst* retroactively as a matter of state law and granted relief in dozens of collateral-review cases where the defendant's sentence became final after *Ring*. *See, e.g.*, *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016). But the Court has never addressed *Hurst* retroactivity as a matter of federal law, and the Court has consistently applied a state-law "cutoff" at the date *Ring* was decided—June 24, 2002—to deny relief in dozens of other collateral cases. *See, e.g.*, *Asay v. State*, 210 So. 3d 1 (Fla. 2016). The Court recently reaffirmed its retroactivity cutoff in *Hitchcock v. State*, No. SC17-445, 2017 WL 3431500 (Fla. Aug. 10, 2017).

This Court's current *Ring*-based retroactivity cutoff violates the United States Constitution and should not be applied to deny Appellant the same *Hurst* relief being granted in scores of materially indistinguishable collateral cases. Denying Appellant *Hurst* retroactivity because his death sentence became final in 1998, while affording retroactivity to similarly-situated defendants who were sentenced (or resentenced) between 2002 and 2016, would violate the Eighth and Fourteenth Amendments' prohibition against arbitrary and capricious imposition of the death penalty, as well as the Fourteenth Amendment's guarantee of equal protection and due process.

---

80 (1993) (foreclosing application of the harmless-error doctrine to deny relief based on jury decisions not comporting with Sixth Amendment requirements).

A. This Court's retroactivity cutoff violates the Eighth and Fourteenth Amendments' prohibition against arbitrary and capricious imposition of the death penalty

It has long been established that the death penalty cannot "be imposed under sentencing procedures that create[] a substantial risk that it would be inflicted in an arbitrary or capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *see also Furman v. Georgia*, 408 U.S. 238, 310 (1972) ("[T]he Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.") (Stewart, J., concurring). In other words, the death penalty cannot be imposed in certain cases in a way that is comparable to being "struck by lightning." *Furman*, 408 U.S. at 308. This Court's current *Hurst* retroactivity cutoff results in arbitrary and capricious denials of relief.

Experience has already shown the arbitrary results inherent in this Court's application of the *Ring*-based retroactivity cutoff. The date of a particular death sentence's finality on direct appeal in relation to the June 24, 2002 decision in *Ring*—and thus whether this Court has held *Hurst* retroactive based on its bright-line cutoff—has at times depended on whether there were delays in transmitting the record on appeal to this Court for the direct appeal;[3] whether direct appeal counsel

[3] *See, e.g.*, *Lugo v. State*, 845 So. 2d 74 (Fla. 2003) (two-year delay between the time defense counsel filed a notice of appeal and the record on appeal being transmitted to this Court, almost certainly resulting in the direct appeal being decided post-*Ring*).

sought extensions of time to file a brief; whether a case overlapped with this Court's summer recess; how long the assigned Justice of this Court took to submit the opinion for release;[4] whether an extension was sought for a rehearing motion and whether such a motion was filed; whether there was a scrivener's error necessitating issuance of a corrected opinion; whether counsel chose to file a petition for a writ of certiorari in the United States Supreme Court or sought an extension to file such a petition; and how long a certiorari petition remained pending in the Supreme Court.

In one striking example, this Court affirmed Gary Bowles' and James Card's unrelated death sentences in separate opinions that were issued on the same day, October 11, 2001. *See Bowles v. State*, 804 So. 2d 1173 (Fla. 2001); *Card v. State*, 803 So. 2d 613, 617 (Fla. 2001). Both inmates petitioned for a writ of certiorari in the United States Supreme Court. Mr. Card's sentence became final four (4) days after *Ring* was decided—on June 28, 2002—when his certiorari petition was denied. *Card v. Florida*, 536 U.S. 963 (2002). However, Mr. Bowles's sentence became final seven (7) days before *Ring* was decided—on June 17, 2002—when his certiorari petition was denied. *Bowles v. Florida*, 536 U.S. 930 (2002). This Court recently granted *Hurst* relief to Mr. Card, ruling that *Hurst* was retroactive because

[4] *Compare Booker v. State*, 773 So. 2d 1079 (Fla. 2017) (this Court's opinion issued within one year after all briefs had been submitted, before *Ring*), *with Hall v. State*, 201 So. 3d 628 (Fla. 2016) (opinion issued twenty-three months after the last brief was submitted). If this Court had taken the same amount of time to decide *Booker* as it did *Hall*, Mr. Booker's death sentence would have become final after *Ring*.

his sentence became final after the *Ring* cutoff. *See Card*, 219 So. 3d at 47. However, Mr. Bowles, whose case was decided on direct appeal on *the same day* as Mr. Card's, falls on the other side of this Court's current retroactivity cutoff.

Other arbitrary factors affecting whether a defendant receives *Hurst* relief under this Court's date-of-*Ring*-based retroactivity approach include whether a resentencing based on relief was granted because of an unrelated error. Under the Court's current approach, "older" cases dating back to the 1980s with a post-*Ring* resentencing are subject to *Hurst*, while other less "old" cases are not. *See*, *e.g.*, *Johnson v. State*, 205 So. 3d 1285, 1285 (granting *Hurst* relief to a defendant whose crime occurred in 1981 but was granted relief on a third successive post-conviction motion in 2010, years after the *Ring* decision); *Card*, 219 So. 3d at 47 (granting *Hurst* relief to a defendant whose crime occurred in 1981 but was afforded relief on a second successive post-conviction motion in 2002—just four days after *Ring* was decided); *cf. Calloway v. State*, 210 So. 3d 1160 (Fla. 2017) (granting *Hurst* relief in a case where the crime occurred in the late 1990s, but interlocutory appeals resulted in a ten-year delay before the trial). Under this Court's approach, a defendant who was originally sentenced to death before Appellant, but who was later resentenced to death after *Ring*, would receive *Hurst* relief and Appellant would not.

Moreover, under the Court's current rule, some litigants whose *Ring* claims were wrongly rejected on the merits during the 2002-2016 period will be denied the

benefit of *Hurst* because the Court addressed the issue in a post-conviction rather than a direct appeal posture. *See, e.g.*, *Miller v. State*, 926 So. 2d 1243, 1259 (Fla. 2006); *Nixon v. State*, 932 So. 2d 1009, 1024 (Fla. 2006); *Bates v. State*, 3 So. 3d 1091, 1106 n.14 (Fla. 2009); *Bradley v. State*, 33 So. 3d 664, 670 n.6 (Fla. 2010).[5]

Making *Hurst* retroactive to only post-*Ring* sentences also unfairly denies *Hurst* access to defendants who were sentenced between *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Ring*. The fundamental unfairness of that result is stark given that the Supreme Court made clear in *Ring* that its decision flowed directly from *Apprendi*. *See Ring*, 536 U.S. at 588-89. And in *Hurst*, the Court repeatedly stated that Florida's scheme was incompatible with "*Apprendi*'s rule," of which *Ring* was an application. 136 S. Ct. at 621. This Court itself has acknowledged that *Ring* was an application of *Apprendi*. *See Mosley*, 209 So. 3d at 1279-80. This Court's drawing of its retroactivity cutoff at *Ring* instead of *Apprendi* represents the sort of capriciousness that is inconsistent with the Eighth Amendment.

[5] Even if this Court were to maintain its unconstitutional retroactivity "cutoff" at *Ring*, individuals who preserved the substance of the *Hurst* decisions before *Hurst* should receive the retroactive benefit of *Hurst* under this Court's "fundamental fairness" doctrine, which the Court has previously applied in other contexts, *see, e.g.*, *James v. State*, 615 So. 2d 668, 669 (Fla. 1993), and which the Court has applied once in the *Hurst* context, *see Mosley*, 209 So. 3d at 1274, but inexplicably never addressed since. Justice Lewis recently endorsed this preservation approach in *Hitchcock*. *See* 2017 WL 3431500, at *2 (Lewis, J., concurring) (stating that the Court should "simply entertain *Hurst* claims for those defendants who properly presented and preserved the substance of the issue, even before *Ring* arrived.").

B. This Court's retroactivity cutoff violates the Fourteenth Amendment's guarantee of equal protection and due process

This Court's retroactivity cutoff violates the Fourteenth Amendment's guarantee of equal protection and due process. As an equal protection matter, the cutoff treats death-sentenced prisoners in the same posture—on collateral review—differently without "some ground of difference that rationally explains the different treatment." *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964). When two classes are created to receive different treatment by a state actor like this Court, the question becomes "whether there is some ground of difference that rationally explains the different treatment . . . ." *Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972); *see also McLaughlin*, 379 U.S. at 191. The Fourteenth Amendment requires that distinctions in state criminal laws that impinge upon fundamental rights must be strictly scrutinized. *See, e.g., Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). Capital defendants have a fundamental right to a reliable determination of their sentences. *See Lockett v. Ohio*, 438 U.S. 586, 604 (1978). When a state draws a line between those capital defendants who will receive the benefit of the rules designed to enhance the quality of decision-making by a penalty-phase jury, and those who will not, the State's justification for that line must satisfy strict scrutiny. Far from meeting strict scrutiny, this Court's *Hurst* retroactivity cutoff lacks even a rational connection to any legitimate state interest. *See Dep't of Agric. v. Moreno*, 413 U.S. 528 (1973).

As a due process matter, denying the benefit of Florida's new post-*Hurst* capital sentencing statute to "pre-*Ring*" defendants like Appellant violates the Fourteenth Amendment because once a state requires certain sentencing procedures, it creates Fourteenth Amendment life and liberty interests in those procedures. *See, e.g.*, *Evitts v. Lucey*, 469 U.S. 387, 393 (1985) (due process interest in state created right to direct appeal); *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) (liberty interest in state-created sentencing procedures); *Ford v. Wainwright*, 447 U.S. 399, 427-31 (1986) (O'Connor, J., concurring) (liberty interest in meaningful state proceedings to adjudicate competency to be executed); *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288-89 (1998) (O'Connor, J., with Souter, Ginsburg, & Breyer, JJ., concurring) (life interest in state-created right to capital clemency proceedings).

Although the right to the particular procedure is established by state law, the violation of the life and liberty interest it creates is governed by *federal* constitutional law. *See id.* at 347; *Ford*, 477 U.S. 399, 428-29 (O'Connor, J., concurring), *Evitts*, 469 U.S. at 393 (state procedures employed "as 'an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant'" must comport with due process). Instead, defendants have "a substantial and legitimate expectation that [they] will be deprived of [their] liberty only to the extent determined by the jury in the exercise of its discretion . . . and that liberty interest is one that the Fourteenth Amendment preserves against arbitrary deprivation by the State." *Hicks*, 447 U.S.

at 346 (O'Connor, J., concurring). Courts have found in a variety of contexts that state-created death penalty procedures vest in a capital defendant life and liberty interests that are protected by due process. *See. e.g.*, *Ohio Adult Parole Authority*, 523 U.S. at 272; *Ford*, 477 U.S. at 427-31 (O'Connor, J., concurring). In *Hicks*, the Supreme Court held that the trial court's failure to instruct the jury that it had the option to impose an alternative sentence violated the state-created liberty interest (and federal due process) in having the jury select his sentence from the full range of alternatives available under state law. 477 U.S. at 343.

III. Because the *Hurst* decisions announced substantive constitutional rules, the Supremacy Clause of the United States Constitution requires state courts to apply those rules retroactively to all cases on collateral review

A. The Supremacy Clause requires state courts to apply substantive constitutional rules retroactively to all cases on collateral review

In *Montgomery v. Louisiana*, 136 S. Ct. 718, 731-32 (2016), the United States Supreme Court held that the Supremacy Clause of the Constitution requires state courts to apply "substantive" constitutional rules retroactively as a matter of federal constitutional law, notwithstanding any separate state-law retroactivity analysis.

In *Montgomery*, a Louisiana state prisoner filed a claim in state court seeking retroactive application of the rule announced in *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that imposition of mandatory sentences of life without parole on juveniles violates the Eighth Amendment). The state court denied the prisoner's claim on the ground that *Miller* was not retroactive as a matter of state retroactivity

law. *Montgomery*, 136 S. Ct. at 727. The United States Supreme Court reversed, holding that because the *Miller* rule was substantive as a matter of federal law, the state court was obligated to apply it retroactively. *See id.* at 732-34.

Montgomery clarified that the Supremacy Clause requires state courts to apply substantive rules retroactively, notwithstanding state-law analysis. *Montgomery*, 136 S. Ct. at 728-29 ("[W]hen a new substantive rule of constitutional law controls the outcome of a case, *the Constitution* requires state collateral review courts to give retroactive effect to that rule.") (emphasis added). Thus, *Montgomery* held, "[w]here state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge." *Id.* at 731-32.

Importantly for purposes of *Hurst* retroactivity analysis, the Supreme Court found the *Miller* rule substantive in *Montgomery* even though the rule had "a procedural component." *Id.* at 734. *Miller* did "not categorically bar a penalty for a class of offenders or type of crime—as, for example, [the Court] did in *Roper* or *Graham*." *Miller*, 132 S. Ct. at 2471. Instead, "it mandate[d] only that a sentence follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* Despite *Miller*'s procedural mandates, the Court in *Montgomery* warned against "conflat[ing] a procedural requirement necessary to implement a substantive guarantee with a rule

that 'regulate[s] only the *manner of determining* the defendant's culpability.'" *Montgomery*, 136 S. Ct. at 734 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004)) (first alteration added). Instead, the Court explained, "[t]here are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within a category of persons whom the law may no longer punish," *id.* at 735, and that the necessary procedures do not "transform substantive rules into procedural ones," *id.* In *Miller*, the decision "bar[red] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*." *Id.* at 734.

B. The *Hurst* decisions announced substantive rules that must be applied retroactively to Appellant under the Supremacy Clause

The *Hurst* decisions announced substantive rules that must be applied retroactively to Appellant by this Court under the Supremacy Clause. At least two substantive rules were established by *Hurst v. Florida* and *Hurst v. State*.

First, a Sixth Amendment rule was established requiring that a jury find as fact: (1) each aggravating circumstance; (2) that those particular aggravating circumstances together are "sufficient" to justify imposition of the death penalty; and (3) that those particular aggravating circumstances together outweigh the mitigation in the case. *Hurst v. State*, 202 So. 3d at 53-59. Each of those findings is required to be made by the jury beyond a reasonable doubt. Such findings are

manifestly substantive. *See Montgomery*, 136 S. Ct. at 734 (holding that the decision whether a juvenile is a person "whose crimes reflect the transient immaturity of youth" is a substantive, not procedural, rule). As in *Montgomery*, these requirements amounted to an "instance[] in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within a category of persons whom the law may no longer punish." *Id.* at 735.

Second, an Eighth Amendment rule was established that requires those three beyond-a-reasonable-doubt findings to be made unanimously by the jury. The substantive nature of the unanimity rule is apparent from this Court's explanation in *Hurst v. State* that unanimity (1) is necessary to ensure compliance with the constitutional requirement that the death penalty be applied narrowly to the worst offenders, and (2) ensures that the sentencing determination "expresses the values of the community as they currently relate to the imposition of the death penalty." *Hurst v. State*, 202 So. 3d at 60-61. The function of the unanimity rule is to ensure that Florida's death-sentencing scheme complies with the Eighth Amendment and to "achieve the important goal of bringing [Florida's] capital sentencing laws into harmony with the direction of the society reflected in [the majority of death penalty] states and with federal law." *Id.* As a matter of federal retroactivity law, the rule is therefore substantive. *See Welch v. United States*, 136 S. Ct. 1257, 1265 (2016) ("[T]his Court has determined whether a new rule is substantive or procedural by

considering the function of the rule"). This is true even though the rule's subject concerns the method by which a jury makes its decision. *See Montgomery*, 136 S. Ct. at 735 (noting that state's ability to determine method of enforcing constitutional rule does not convert rule from substantive to procedural).

The United States Supreme Court's decision in *Welch* is illustrative of the substantive nature of *Hurst*. In *Welch*, the Court addressed the retroactivity of the constitutional rule articulated in *Johnson v. United States*, 135 S. Ct. 2551, 2560 (2015). In *Johnson*, the Court held that a federal statute that allowed sentencing enhancement was unconstitutional. *Id.* at 2556. In *Welch*, the Court held that *Johnson*'s ruling was substantive because it "affected the reach of the underlying statute rather than the judicial procedures by which the statute is applied"—therefore it must be applied retroactively. *Welch*, 136 S. Ct. at 1265. The Court emphasized that its determination whether a constitutional rule is substantive or procedural "does not depend on whether the underlying constitutional guarantee is characterized as procedural or substantive," but rather whether "the new rule itself has a procedural function or a substantive function," i.e., whether the new rule alters only the procedures used to obtain the conviction, or alters instead the class of persons the law punishes. *Id.* at 1266. In *Welch*, the Court pointed out that, "[a]fter *Johnson*, the same person engaging in the same conduct is no longer subject to the Act and faces at most 10 years in prison. The residual clause is invalid under *Johnson*, so it

can no longer mandate or authorize any sentence." *Id.* Thus, "*Johnson* establishes, in other words, that even the use of impeccable factfinding procedures could not legitimate a sentence based on that clause." *Id.* "It follows," the Court held, "that *Johnson* is a substantive decision." *Id.* (internal quotation omitted).

The same reasoning applies in the *Hurst* context. The Sixth Amendment requirement that each element of a Florida death sentence must be found beyond a reasonable doubt, and the Eighth Amendment requirement of jury unanimity in fact-finding, are substantive constitutional rules as a matter of federal law because they place certain murders "beyond the State's power to punish," *Welch*, 136 S. Ct. at 1265, with a sentence of death. Following the *Hurst* decisions, "[e]ven the use of impeccable factfinding procedures could not legitimate a sentence based on" the judge-sentencing scheme. *Id.* And in the context of a *Welch* analysis, the "unanimous finding of aggravating factors and [of] the facts that are sufficient to impose death, as well as the unanimous finding that they outweigh the mitigating circumstances, all serve to help *narrow the class of murderers subject to capital punishment*," *Hurst*, 202 So. 3d at 60 (emphasis added), i.e., the new law by necessity places certain individuals beyond the state's power to impose a death sentence. The decision in *Welch* makes clear that a substantive rule, rather than a procedural rule, resulted from the *Hurst* decisions. *See Welch*, 136 S. Ct. at 1264-65 (a substantive rule "alters . . . the class of persons that the law punishes.").

Hurst retroactivity is not undermined by *Schriro v. Summerlin*, 542 U.S. 348, 364 (2004), where the United States Supreme Court held that *Ring* was not retroactive in a federal habeas case. In *Ring*, the Arizona statute permitted a death sentence to be imposed on a finding of fact that at least one aggravating factor existed. *Summerlin* did not review a statute, like Florida's, that required the jury not only to conduct the fact-finding regarding the aggravators, but also as to whether the aggravators were *sufficient* to impose death and whether the death penalty was an appropriate sentence. *Summerlin* acknowledged that if the Court itself "[made] a certain fact essential to the death penalty . . . [the change] would be substantive." 542 U.S. at 354. Such a change occurred in *Hurst* where, for the first time, the Court found it unconstitutional for a judge alone to find that "sufficient aggravating factors exist and [t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances." 136 S. Ct. at 622 (internal citation omitted).

Moreover, *Hurst*, unlike *Ring*, addressed the proof-beyond-a-reasonable-doubt standard in addition to the jury trial right, and the United States Supreme Court has always regarded proof-beyond-a-reasonable-doubt decisions as substantive. *See, e.g.*, *Ivan V. v. City of New York*, 407 U.S. 203, 205 (1972) (explaining that "the major purpose of the constitutional standard of proof beyond a reasonable doubt announced in [*In re Winship*, 397 U.S. 358 (1970)] was to overcome an aspect of a criminal trial that substantially impairs the truth-finding function, and *Winship* is

thus to be given complete retroactive effect."); *Powell v. Delaware*, 153 A.3d 69 (Del. 2016) (holding *Hurst* retroactive under Delaware's state *Teague*-like retroactivity doctrine and distinguishing *Summerlin* on the ground that *Summerlin* "only addressed the misallocation of fact-finding responsibility (judge versus jury) and not . . . the applicable burden of proof.").

C. This Court has an obligation to address Appellant's federal retroactivity arguments

Because this Court is bound by the federal constitution, it has the obligation to address Appellant's federal retroactivity arguments. *See Testa v. Katt*, 330 U.S. 386, 392-93 (1947) (state courts must entertain federal claims in the absence of a "valid excuse"); *Martin v. Hunter's Lessee*, 14 U.S. 304, 340-42 (1816).

Addressing those claims meaningfully in the present context requires full briefing and oral argument. The federal constitutional issues were raised to this Court in *Hitchcock*, but this Court ignored them. To dismiss this appeal on the basis of *Hitchcock* would compound that error.

CONCLUSION

This Court should hold that federal law requires the *Hurst* decisions to be applied retroactively to Appellant, vacate Appellant's death sentence, and remand to the circuit court for a new penalty phase or imposition of a life sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2017, the foregoing was electronically served via the e-portal to Assistant Attorney General Charmaine Millsaps at charmaine.millsaps@myfloridalegal.com and capapp@myfloridalegal.com.

/s/ Billy H. Nolas
Billy H. Nolas

EXHIBIT 5

In the Supreme Court of Florida

GARY LAWRENCE,

Appellant,

v.

CASE NO.: SC17-1442
CAPITAL CASE

STATE OF FLORIDA,

Appellee.

_____/

STATE'S REPLY TO ORDER TO SHOW CAUSE

On September 25, 2017, this Court issued an order to Appellant to show cause "why the trial court's order should not be affirmed in light of this Court's decision *Hitchcock v. State*, SC17-445." Under this Court's decisions in *Asay v. State*, 210 So.3d 1 (Fla. 2016), and *Hitchcock v. State*, 42 Fla. L. Weekly S753, 2017 WL 3431500 (Fla. Aug. 10, 2017), Lawrence is not entitled to any *Hurst* relief because his sentence became final before *Ring v. Arizona*, 536 U.S. 584 (2002), was decided. This Court has repeatedly rejected the same constitutional attacks opposing counsel presents in the response. In sum, *Asay* and *Hitchcock* control. This Court should once again follow its well-established precedent and affirm the trial court's summary denial of the successive postconviction motion.

Procedural history of the *Hurst* claim

On January 20, 1998, Lawrence's death sentence became final when the United States Supreme Court denied the petition from the direct appeal. *Lawrence v. Florida*, 522 U.S. 1080 (1998) (No. 97-6787).

On April 5, 2017, Lawrence, represented by the Capital Habeas Unit (CHU) of the federal Public Defender's Office, filed a successive 3.851 motion raising a claim under *Hurst v. Florida*, 136 S.Ct. 616 (2016) (*Hurst v. Florida*), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016) (*Hurst II*). On April 7, 2017, the State, citing *Asay v. State*, 210 So.3d 1 (Fla. 2016), and *Gaskin v. State*, 218 So.3d 399 (Fla. 2017), asserted that *Hurst II* did not apply to Lawrence because his sentence was final years before *Ring* was decided.[1] On July 5, 2017, the trial court summarily denied the successive postconviction motion concluding that *Hurst* did not apply retroactively to Lawrence.

Lawrence then appealed the denial of his successive postconviction motion to this Court. *Lawrence v. State*, SC17-1442. On September 27, 2017, this Court issued an order to show cause why *Hitchcock* does not control. On October 2,

[1] The State simultaneously filed a motion to appoint new state postconviction counsel in the trial court because Mary Catherine Bonner, who was removed from the registry list, had been Lawrence's counsel. *In Re Mary Catherine Bonner*, AOSC16-100 (Fla. Nov. 8, 2016); *Thomas v. McDonough*, 452 F. Supp.2d 1203, 1206 (M.D. Fla. 2006) (noting Bonner missed the federal habeas deadline in two capital cases without a "good reason or explanation" for the failure to file on time). Ms. Bonner did not file a motion to withdraw in Lawrence's case even though, as the State understands it, she promised to withdraw from all her capital cases as part of the settlement of this Court's inquiry. On May 16, 2017, the trial court granted the State's motion and appointed CCRC-North as new state postconviction counsel.

2017, Lawrence filed his response. This is the State's reply to the response to the order to show cause.

Merits

Under this Court's well-established controlling precedent, *Hurst* is not retroactively applicable to Lawrence because his death sentence became final in 1998. *Lawrence v. Florida*, 522 U.S. 1080 (1998).

In *Asay v. State*, 210 So.3d 1, 11-22 (Fla. 2016), *cert. denied, Asay v. Florida*, 2017 WL 1807588 (Aug. 24, 2017), this Court held that any capital defendant whose death sentence was final before *Ring v. Arizona*, 536 U.S. 584 (2002), was decided in 2002 was not entitled to *Hurst* relief. This Court performed a full retroactivity analysis using the state test of *Witt v. State*, 387 So.2d 922 (Fla. 1980). *Asay*, 210 So.3d at 15-22.

This Court reaffirmed its holding in *Asay* in *Hitchcock v. State*, 42 Fla. L. Weekly S753, 2017 WL 3431500 (Fla. Aug. 10, 2017). This Court in *Hitchcock* rejected several constitutional challenges to its non-retroactivity rule reaffirming its prior holding in *Asay*. Opposing counsel in his response to the order to show cause makes many of the same Eighth Amendment, equal protection, and due process arguments that this Court explicitly rejected in *Hitchcock*, *Asay VI*, and *Lambrix*. *Hitchcock*, 2017 WL 3431500 at *2; *Asay v. Jones*, 2017 WL 3472836, *6 (Fla. Aug. 14, 2017) (*Asay VI*) (denying an Eighth Amendment challenge to the holding in *Asay*); *Lambrix v. State*, 2017 WL 4320637, *1-*2 (Fla. Sept. 29, 2017)

(denying Eighth Amendment, due process, and equal protection challenges to the holding in *Asay* citing *Hitchcock* and *Asay VI*). This Court should again reject these various constitutional challenges for the same reasons.[2]

Moreover, this Court has explicitly followed *Asay* in a number of capital cases which are now final.[3] This Court recently affirmed that holding yet again in several cases including in two active death warrant cases. *Jones v. State*, 2017 WL 4296370, *2 (Fla. Sept. 28, 2017) (denying *Hurst* relief citing *Asay*); *Asay v. State*, 224 So.3d 695 (Fla. 2017) (*Asay VI*) (same in active warrant); *Lambrix v. State*, 2017 WL 4320637 (Fla. Sept. 29, 2017) (same in active warrant). So, since December of 2016 and as recently as September of 2017, this Court has consistently followed *Asay*. This Court has repeatedly held in numerous capital cases including active warrant cases that *Hurst* does not apply retroactively to defendants like Lawrence. *Asay* is firmly established precedent. *Asay* and *Hitchcock* control.

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[2] The Eleventh Circuit has also rejected equal protection, due process, and Eighth Amendment challenges to this Court's non-retroactivity rule established in *Asay* recently in *Lambrix v. Sec'y, Fla. Dep't of Corr.*, __ F.3d __, 2017 WL 4416205 (11th Cir. Oct. 5, 2017), *cert. denied*, *Lambrix v. Jones*, 2017 WL 4456332 (Oct. 5, 2017).

[3] *Bogle v. State*, 213 So.3d 833, 855 (Fla. 2017) (denying *Hurst* relief citing *Asay*); *Lambrix v. State*, 217 So.3d 977, 989 (Fla. March 9, 2017), *rehearing denied*, SC16-56, 2017 WL 1927739 (Fla. May 10, 2017) (denying *Hurst* relief citing *Asay*); *Lukehart v. Jones*, 2017 WL 1033691 (Fla. March 17, 2017) (denying *Hurst* relief citing *Asay*); *Oats v. Jones*, 2017 WL 2291288 (Fla. May 25, 2017) (denying *Hurst* relief citing *Asay*); *Rodriguez v. State*, 219 So.3d 751, 760 (Fla. April 20, 2017), *rehearing denied*, SC15-1795, 2017 WL 2598492 (Fla. June 15, 2017) (denying *Hurst* relief citing *Asay*).

Fundamental fairness, the Eighth Amendment, and equal protection

Opposing counsel insisted that the cut-off date of 2002 created in *Asay* is arbitrary in violation of due process, the Eighth Amendment, and equal protection. This Court has rejected those same arguments in *Asay VI* and *Lambrix*. *Asay*, 2017 WL 3472836 at *6 (*Asay VI*); *Lambrix*, 2017 WL 4320637at *1-*2 (denying Eighth Amendment, due process, and equal protection challenges to the holding in *Asay* citing *Hitchcock* and *Asay VI*). Indeed, many of these same arguments were made by the dissenters in *Asay* itself but rejected by the majority.[4] The majority in *Asay* drew the cut-off in full awareness of these constitutional challenges.

As to fundamental fairness, due process does not require courts abandon all retroactivity analysis and apply all new rules to all cases. Such an argument negates all finality in the criminal law and it is finality that is the overriding concern in any retroactivity analysis including in capital cases. *Penry v. Lynaugh*,

[4] *Asay*, 210 So.3d at 31 (Lewis, J., concurring) ("Florida will treat similarly situated defendants differently – here, the difference between life and death – for potentially the simple reason of one defendant's docket delay" and characterizing the majority's cut-off date based on *Ring* as being "arbitrary"); *Asay*, 210 So.3d at 35-35 (Pariente, J., dissenting) (stating that *Hurst II* is that "rare situation in which finality yields to fundamental fairness" and that the majority's rule results in "arbitrariness as to who receives relief depending on when the defendant was sentenced or, in some cases, resentenced" and taking the view that to "avoid such arbitrariness and to ensure uniformity and fundamental fairness in Florida's capital sentencing," "*Hurst* should be applied retroactively to all death sentences"); *Asay*, 210 So.3d at 37 (Perry, J., dissenting) ("the line drawn by the majority is arbitrary and cannot withstand scrutiny under the Eighth Amendment because it creates an arbitrary application of law to two groups of similarly situated persons"); *see also Gaskin v. State*, 218 So.3d 399, 401 (Fla. 2017) (Pariente, J., dissenting) (stating that "fundamental fairness" requires us "to hold *Hurst* fully retroactive to all death sentences").

492 U.S. 302 (1989). As the *Penry* Court observed, the overriding concern of finality that underlies retroactivity is just as "applicable in the capital sentencing context." *Id.* at 314.

Furthermore, both federal and state courts have retroactivity doctrines that depend on dates. For example, a cut-off date is part of the pipeline doctrine first established in *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). The *Griffith* Court created the pipeline concept by holding that all new developments in the criminal law must be applied retrospectively to all cases, state or federal, that are pending on direct review. *See also Smith v. State*, 598 So.2d 1063, 1065 (Fla. 1992) (discussing the history of the pipeline concept and *Griffith*). *Griffith* depends on the date of finality of the direct appeal. The current federal test for retroactivity, *Teague v. Lane*, 489 U.S. 288 (1989), also depends on a date. If a case is final on direct review, the defendant will not receive benefit of the new rule unless one of the exceptions to *Teague* applies. The date of finality is the critical date-based toogle under *Teague*.

Inherent in the concept of non-retroactivity is that some cases will get the benefit of a new development, while other cases will not, depending on a date. Drawing a line between newer cases that will receive benefit of a new development in the law and older final cases that will not receive benefit of the new development is part and parcel of the landscape of retroactivity analysis. It is simply part of the retroactivity paradigm that some cases will be treated differently than other cases based on the age of the case. Neither *Asay* nor *Griffith* nor

Teague violates due process. Retroactivity analysis itself is not fundamentally unfair in violation of due process.

As to Equal Protection, it is doubtful that Equal Protection analysis even applies to judicial decisions, such as *Asay*, as opposed to statutes. *Bouie v. City of Columbia*, 378 U.S. 347 (1964) (using due process, not equal protection, when a judicial decision is at issue). But even assuming it does, such an argument makes little jurisprudential sense. A cut-off date does not create a protected class and there is no fundamental right involved. The date of the finality of a defendant's sentence is not an immutable characteristic requiring application of strict scrutiny or intermediate scrutiny. The only possible standard of review under equal protection principles, would be rational basis review. And the cut-off date of *Ring* established by this Court in *Asay* more than satisfies rational basis review. Again, all retroactivity analysis depends on cut-off dates.

According to opposing counsel's logic, all retroactivity tests violate equal protection. The Equal Protection Clause does not mandate that every major change in the law be applied retroactively, which would be the necessary outcome of adopting this view. Neither *Griffith* nor *Teague* nor *Asay* violates equal protection.

In sum, *Asay V*, *Hitchcock*, *Asay VI*, and *Lambrix* control.

Federal retroactivity of *Hurst*

While opposing counsel insists that *Hurst* is retroactive under federal law, it is not. The United States Supreme Court has held that *Ring* was not retroactive in *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004) (using the federal test for retroactivity of *Teague v. Lane*, 489 U.S. 288 (1989)). If a case is not retroactive under the broader state test for retroactivity of *Witt v. State*, 387 So.2d 922 (Fla. 1980), which this Court used in *Asay*, it is certainly not retroactive under the narrower federal test for retroactivity of *Teague*. *See Asay*, 210 So.3d at 15 (describing *Witt* as "more expansive" than *Teague* citing *Johnson v. State*, 904 So.2d 400, 409 (Fla. 2005)).

The Eleventh Circuit recently held that *Hurst* is not retroactive under federal law. *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1165, n.2 (11th Cir. 2017) ("under federal law *Hurst*, like *Ring*, is not retroactively applicable on collateral review" citing *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004)), *cert. denied, Lambrix v. Jones*, 17-5153, 2017 WL 3008927 (Oct. 2, 2017); *Lambrix v. Sec'y, Fla. Dep't of Corr.*, __ F.3d __, 2017 WL 4416205, *8 (11th Cir. Oct. 5, 2017) (concluding this Court's holding in *Asay* to be "fully in accord with the U.S. Supreme Court's precedent in *Ring* and *Schriro*"), *cert. denied*, *Lambrix v. Jones*, 2017 WL 4456332 (Oct. 5, 2017). The Eleventh Circuit has previously held that *Ring* was not retroactive under *Teague*. *Turner v. Crosby*, 339 F.3d 1247, 1282-86 (11th Cir. 2003) (performing a full *Teague* analysis of *Ring*). The Eleventh Circuit's decision in *Lambrix* is definitive precedent that *Hurst* is not retroactive in federal

court under the federal retroactivity test of *Teague*. *Hurst II* is not retroactive under federal law.

Furthermore, the Supremacy Clause does not require states to adopt *Teague*. States are free to adopt their own broader retroactivity tests. *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008); *Montgomery v. Louisiana*, 136 S.Ct. 718, 728-29 (2016) (explaining that, under *Danforth*, states are free to have broader, but not narrower, retroactivity tests if a new substantive rule of constitutional law is involved).

The United States Supreme Court in *Montgomery* did not overrule *Summerlin*. Indeed, the *Montgomery* Court relied upon *Summerlin* at a couple of points in its discussion. *Id.*, 136 S.Ct. at 723, 728. The United States Supreme Court in *Montgomery* explained that the federal constitution requires that new substantive rules be applied retroactively. *Montgomery*, 136 S.Ct. at 728. The *Montgomery* Court then defined substantive as "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Id.* The United States Supreme Court in *Summerlin*, a retroactivity case, defined substantive as a new rule that places "particular conduct or persons" "beyond the State's power to punish." *Summerlin*, 542 U.S. at 352.

Opposing counsel insists that *Hurst II* is retroactive under federal law because, he claims, the right to a jury trial is a substantive right. But, according to the United States Supreme Court, the right to a jury trial is a procedural right,

not a substantive right. The United States Supreme Court specifically observed in a retroactivity case that "*Ring*'s holding is properly classified as procedural" because the Sixth Amendment's jury-trial guarantee "has nothing to do with the range of conduct a State may criminalize." *Summerlin*, 542 U.S. at 353. The *Summerlin* Court explained that rules that allocate decisionmaking authority between the judge and the jury "are prototypical procedural rules." *Id.* The Supreme Court noted that they had classified the right to a jury trial as procedural "in numerous other contexts." *Id.* at 353-54 (citing numerous cases). While the opposing counsel may view the right to a jury trial as substantive, the United States Supreme Court has repeatedly classified it as procedural and in very similar situations. So, *Hurst* is not substantive under *Montgomery*.

Montgomery does not apply at all. And the state test for retroactivity of *Witt* does not employ the substantive/procedural distinction as a factor. Opposing counsel is really mixing and matching parts of the federal test for retroactivity with the state test for retroactivity. He is tangling *Teague* with *Witt*. But the United States Supreme Court in *Danforth* held that states are not required to adopt the federal test for retroactivity. And, under the state test of *Witt*, this Court has already granted more capital defendants *Hurst* relief than they would have received under the federal test of *Teague*.

Opposing counsel's reliance on *Welch v. United States*, 136 S.Ct. 1257 (2016), is even more misplaced. *Welch* concerned the retroactivity of a statutory interpretation case, not the Sixth Amendment right-to-a-jury-trial. *Welch* involved

a federal criminal statute, not the federal constitution. And *Welch* certainly did not overrule *Summerlin* or *DeStefano*.

And *Ivan V. v. City of New York*, 407 U.S. 203 (1972), is irrelevant to any retroactivity analysis in Florida. If a rule of law it not new, there is no retroactivity analysis required. *Butler v. McKellar*, 494 U.S. 407, 412 (1990) (defining a "new rule" for purpose of retroactivity as one that "breaks new ground or imposes a new obligation," such as a decision that explicitly overrules an earlier holding). Florida's standard of proof for aggravating circumstances is not new. Florida law has required that the State prove aggravators at the beyond-a-reasonable-doubt standard of proof for over three decades.[5] Nor did *Hurst* truly involve the standard of proof. The issue in *Hurst v. Florida* was who decides — the judge versus the jury — not the standard of proof. Nor is the new unanimity requirement established by this Court in *Hurst II* the equivalent of a standard of proof. They are two very different concepts. The "retroactivity" of the beyond-a-reasonable-doubt standard of proof is a non-issue in this case and all other Florida capital cases as well.

Opposing counsel misreads *Powell v. Delaware*, 153 A.3d 69 (Del. 2016). The Delaware Supreme Court in *Powell* distinguished Florida law as announced

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[5] *Williams v. State*, 37 So.3d 187, 194-95 (Fla. 2010) (stating that the State has the burden to prove beyond a reasonable doubt each and every aggravating circumstance); *Aguirre-Jarquin v. State*, 9 So.3d 593, 607 (Fla. 2009) (explaining that the State must prove the existence of an aggravator beyond a reasonable doubt citing *Parker v. State*, 873 So.2d 270, 286 (Fla. 2004)); *Cf. Floyd v. State*, 497 So.2d 1211, 1214 (Fla. 1986) (striking an aggravator that was not proven "beyond a reasonable doubt").

by this Court in *Hurst II* from Delaware law as announced in *Rauf v. State*, 145 A.3d 430 (Del. 2016), pointing out that Florida law did not involve a change in the standard of proof. *Powell*, 153 A.3d at 73-74 (stating that "unlike *Rauf*," *Hurst II* did not involve "a lower burden of proof"). Nor would the United States Supreme Court agree with the Delaware Supreme Court about a standard of proof applying to weighing, much less that *Teague* or *Ivan V.* mandates retroactive application of any such new standard.[6] While the Delaware Supreme Court is free to apply its *Rauf* decision retroactively under state law under *Danforth*, the United States Supreme Court would never agree that federal constitutional law mandates that *Rauf* be applied retroactively. Such an argument is directly contrary to *Danforth* itself. *Powell*, a state case involving a change in Delaware law, certainly does not establish that federal constitutional law mandates the retroactivity of *Hurst II*, especially not in the face of United States Supreme Court precedent and Eleventh Circuit precedent to the contrary. *Hurst II* simply is not retroactive under federal law.

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[6] *Kansas v. Carr*, 136 S.Ct. 633, 642 (2016) (expressing doubt whether it is even possible to apply a standard of proof to either mitigation or weighing and opining that weighing is "mostly a question of mercy," not a fact); *Kansas v. Marsh*, 548 U.S. 163, 175 (2006) (holding that a death penalty statute may place the burden on the defendant to prove that mitigating circumstances outweigh aggravating circumstances because no particular "method for balancing mitigating and aggravating factors in a capital sentencing proceeding is constitutionally required"); *Kansas v. Marsh*, 548 U.S. 163, 187, n.2 (2006) (Scalia, J., concurring) (observing that the federal Constitution does not require a reasonable doubt standard as to the weighing process). Because the United States Supreme Court does not even view weighing as a fact that is subject to any standard of proof, the High Court would never reach the issue of retroactivity under *Ivan V.*

Accordingly, this Court should affirm the trial court's denial of the successive postconviction motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE'S REPLY TO ORDER TO SHOW CAUSE has been furnished by electronic mail via e-portal to Assistant Capital Collateral Counsel Stacy R. Biggart; Office of Capital Collateral Regional Counsel - North, Tallahassee, FL, 32301; phone: (850) 487-0922 ext. 114; email: Stacy.Biggart@ccmr-north.org; and Billy H. Nolas, Chief, Capital Habeas Unit, Federal Public Defender, Northern District of Florida, 227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300, phone: (850) 942-8818, email: billy_nolas@fd.org this 30th day of October, 2017.

/s/ *Charmaine M. Millsaps*
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Attorney for the State

EXHIBIT 6

No. SC17-1442

IN THE

Supreme Court of Florida

GARY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S REPLY IN SUPPORT OF RESPONSE TO SEPTEMBER 27, 2017 ORDER TO SHOW CAUSE

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RENEWED REQUESTS FOR BRIEFING AND ORAL ARGUMENT

Petitioner renews his requests that the Court permit untruncated briefing.

ARGUMENT

I. The State is incorrect in asserting that *Hitchcock* addressed the federal retroactivity arguments Appellant raises in this proceeding

The State is incorrect that Appellant "makes many of the same Eighth Amendment, equal protection, and due process arguments that this Court explicitly rejected in *Hitchcock*, *Asay IV*, and *Lambrix*." State's Resp. at 3. This Court's decision in *Hitchcock v. State*, No. SC17-445, 2017 WL 3431500 (Fla. Aug. 10, 2017), did not explicitly address or reject *any* of the federal retroactivity arguments in Appellant's response to the order to show cause. *See* Appellant's Resp. at 6-20.

This Court's opinion in *Hitchcock* relied exclusively on the reasoning in *Asay v. State*, 210 So. 3d 1 (Fla. 2016). As the State acknowledges, the Court's decision in *Asay* rested entirely on the state retroactivity law articulated in *Witt v. State*, 387 So. 2d 922 (Fla. 1980). *See* State's Resp. at 3 ("In *Asay* . . . . [t]his Court performed a full retroactivity analysis using the state test of *Witt*"); *see also Asay*, 210 So. 3d at 16 ("To apply a newly announced rule of law to a case that is already final at the time of the announcement, this Court must conduct a retroactivity analysis pursuant

to the dictates of *Witt*.").[1] *Asay* did not address whether federal law required the *Hurst* decisions to be applied retroactively, and certainly did not address the federal retroactivity arguments raised in Appellant's response to the order to show cause in this proceeding. Namely, *Asay* did not address whether a retroactivity "cutoff" drawn at *Ring* violates the Eighth Amendment's prohibition against arbitrary and capricious imposition of the death penalty or the Fourteenth Amendment's Equal Protection and Due Process Clauses. Nor did *Asay* address whether the *Hurst* decisions are "substantive" within the meaning of federal law, such that the Supremacy Clause of the Constitution requires state courts to apply the decisions retroactively in light of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

Hitchcock, in relying totally on *Asay*, also did not explicitly address or reject Appellant's federal retroactivity arguments. *See Hitchcock*, 2017 WL 3431500, at *1 ("We affirm because we agree with the circuit court that our decision in *Asay* forecloses relief."); *id.* at *2 ("Accordingly, we affirm the circuit court's order summarily denying Hitchcock's successive postconviction motion pursuant to *Asay*."). The State's response here attempts to highlight the conclusory sentence in *Hitchcock* that reads: "Although Hitchcock references various *constitutional provisions* as a basis for arguments that *Hurst v. State* should entitle him to a new

[1] As this Court has repeatedly emphasized, *Witt* addresses retroactivity as a matter of state law, which is separate and distinct from federal retroactivity analysis. *See, e.g.*, *Falcon v. State*, 162 So. 3d 954, 955-56 (Fla. 2015).

sentencing proceeding, these are nothing more than arguments that *Hurst v. State* should be applied retroactively to his sentence, which became final prior to *Ring*." State's Resp. at 3 (citing *Hitchcock*, 2017 WL 3431500, at *2) (emphasis added). But the *Hitchcock* Court's reference to "constitutional provisions" cannot be reasonably read to address Appellant's federal retroactivity arguments, as the very next sentence in *Hitchcock* reads: "As such, these arguments were rejected when we decided *Asay*."). *Hitchcock*, 2017 WL 3431500, at *2. As explained above, *Asay* rested its analysis entirely on state retroactivity law and the Florida Constitution.

During the nearly eight months between this Court's decisions in *Asay* and *Hitchcock*, many *Hurst* defendants have raised federal retroactivity arguments in this Court and the circuit courts, explaining that *Asay* did not resolve those matters in its exclusively state-law analysis and imploring that federal law be addressed. Those defendants, appellants, and petitioners, as Appellant does here, advanced federal retroactivity arguments under the Eighth and Fourteenth Amendments, as well as the Supremacy Clause and *Montgomery*. If this Court had intended to put those arguments to rest in *Hitchcock*, it could have done so. But any fair reading of *Hitchcock* leads to the conclusion that those issues remain unresolved in light of the Court's wholesale reliance on *Asay*. Indeed, *Hitchcock* neither mentions the Eighth Amendment's prohibition against arbitrary and capricious imposition of the death penalty, nor the Fourteenth Amendment's Equal Protection and Due Process

Clauses. Nor does *Hitchcock* cite *Montgomery* or otherwise explain why the Supremacy Clause does not require the substantive rules announced in the *Hurst* decisions to be retroactively applied by state courts. The State's response to the order to show cause in this case does not contend otherwise.

To the extent the State suggests that Appellant's federal arguments have been addressed in other cases, those decisions are not applicable here. To wit, the Eleventh Circuit's decision in *Lambrix v. Sec'y*, No. 17-14413, 2017 WL 4416205 (11th Cir. Oct. 5, 2017), is not precedential in this Court and was decided in the context of the current federal habeas statute, which dramatically restricts federal review of state-court decisions. This Court's application of federal constitutional protections, on the other hand, is not circumscribed. More importantly, *Lambrix* dealt with an idiosyncratic issue—the "retroactivity" of Florida's new capital sentencing statute—and did not squarely address the retroactivity of the constitutional rules arising from the *Hurst* decisions. Similar idiosyncratic presentations also render inapplicable to Appellant this Court's recent active-death-warrant decisions in *Asay v. State*, 224 So. 3d 695 (Fla. 2017), *Lambrix v. State*, No. SC17-1687, 2017 WL 4320637 (Fla. Sep. 29, 2017), and *Hannon v. State*, No. SC17-1837, 2017 WL 4944899 (Fla. Nov. 1, 2017).

II. The State's cursory arguments concerning *Hurst* federal retroactivity are not persuasive

The State fails to engage substantively in Appellant's argument that a retroactivity cutoff at *Ring* violates the Eighth Amendment's prohibition against arbitrary and capricious imposition of the death penalty. *See* Appellant's Resp. at 7-10. The State has therefore abandoned any arguments on this issue. *Cf. Hoskins v. State*, 75 So. 3d 250, 257 (Fla. 2011); *Hall v. State*, 823 So. 2d 757, 763 (Fla. 2002).

The State's failure to address the important Eighth Amendment problems with a *Ring*-based retroactivity cutoff is telling. As Appellant explained, a *Ring* cutoff injects into Florida's death penalty jurisprudence a level of arbitrariness and capriciousness—and also denial of equal protection and due process of law—that is not present in typical circumstances where retroactivity is withheld based on widely-recognized pragmatic necessity for courts to evolve constitutional protections prospectively without undue cost to the finality of preexisting judgments.

A *Hurst* retroactivity cutoff at *Ring* inaugurates a degree of capriciousness that far exceeds the level justified by "normal" jurisprudence. To see why this is so, one need only consider how Florida's pre-*Ring* inmates do and do not differ from their post-*Ring* peers. The two groups were both sentenced under a procedure that allowed death sentences to be predicated upon factual findings not tested by a jury trial. But inmates whose death sentences became final before *Ring* have been on death row longer than their post-*Ring* counterparts and have demonstrated over a

longer time that they are capable of adjusting to that environment and continuing to live without endangering any valid interest of the State. Pre-*Ring* inmates also have undergone the prolonged suffering chronicled by Justice Breyer, dissenting from the denial of certiorari in *Sireci v. Florida*, 137 S. Ct. 470 (2016), longer than their post-*Ring* counterparts.

Pre-*Ring* inmates also are more likely than their post-*Ring* counterparts to have been sent to death row under standards that would not produce a capital sentence—or even a capital prosecution—under the conventions of decency prevailing today. In the generation since *Ring*, prosecutors and juries have been increasingly unlikely to seek and impose death sentences. A significant number of cases which terminated in a death verdict before *Ring* are cases where a death sentence would not be imposed, or even pursued, in the modern era. And pre-*Ring* inmates are more likely to have received death sentences in trials involving problematic factfinding: the past two decades have witnessed a broad-spectrum recognition of the unreliability of numerous kinds of evidence—flawed forensic-science theories and practices, hazardous eyewitness identification testimony, and so forth—that was accepted without question in pre-*Ring* capital trials. Doubts that would cause today's prosecutors, juries, and judges to hesitate to seek or impose a death sentence were unrecognized in the pre-*Ring* era. Evidence that led to confident

convictions and unhesitating death sentences decades ago would have substantially less convincing power to prosecutors, juries, and judges today.

Taken together, these considerations highlight that a *Ring*-based retroactivity cutoff involves a level of caprice that exceeds that tolerated by standard-fare retroactivity rules. A *Ring* cutoff's denial of relief in precisely the class of cases in which relief makes the most sense is irremediably perverse and inconsistent with the Eighth and Fourteenth Amendments.

The cursory federal retroactivity arguments the State does advance can be dispensed with briefly. The State asserts, without any authority, that "[t]he only possible standard of review under equal protection principles, would be rational basis review." State's Resp. at 7. This ignores *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), where the Court states that a law "which involves one of the basic rights of man" is subject to strict scrutiny. The State further claims that Appellant believes "*all* retroactivity tests violate equal protection." State's Resp. at 7 (emphasis added). At issue here is a retroactivity test that implicates Appellant's *fundamental rights*. A retroactivity cutoff that deprives some capital defendants of their fundamental right to a reliable determination of their sentences—while affording similarly-situated

defendants the benefits of decision-making by a penalty-phase jury—violates the Fourteenth Amendment's guarantee of equal protection.[2]

The State also relies on *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004), for the proposition that the United States Supreme Court's ruling in that case—that *Ring* is not retroactive in a federal habeas proceeding—means that *Hurst* is also not retroactive in any proceeding. *See* State's Resp. at 8-9. But as Appellant explained initially, *see* Appellant's Resp. at 19, the Arizona statute at issue in *Ring* and *Summerlin* did not require fact-finding regarding the aggravators *and* their "sufficiency" to justify the death penalty. That difference is critical for federal retroactivity. Indeed, *Summerlin* acknowledged that if the Court itself "[made] a certain fact essential to the death penalty . . . [the change] would be substantive." 542 U.S. at 354. Such a change occurred in the *Hurst* decisions where, for the first time, the United States Supreme Court and this Court found it unconstitutional for a judge alone to make a finding of fact as to the "sufficiency" of the aggravation.

Moreover, *Hurst*, unlike *Ring*, addressed the proof-beyond-a-reasonable-doubt standard. Although the State attempts to distinguish *Ivan V. v. City of New York*, 407 U.S. 203 (1972), and *Powell v. Delaware*, 153 A.3d 69 (Del. 2016), *see*

[2] The State contends, "it is doubtful that Equal Protection analysis even applies to judicial decisions," citing *Bouie v. City of Columbia*, 378 U.S. 347 (1964). However, the Court in *Bouie* did not limit application of equal protections analyses to statutes. *Id.* ("We do not reach the question presented under the Equal Protection Clause, for we find merit . . . under the Due Process Clause.").

State's Resp. at 11-12, those attempts fall flat. Even assuming, as the State suggests, that Florida's scheme formerly incorporated the beyond-a-reasonable-doubt standard, that standard was misapplied to findings of fact made by the trial judge, not by the jury. The *Hurst* decisions held that *the jury* must make the beyond-a-reasonable-doubt findings that subject a defendant to a death sentence. Indeed, a federal judge in Florida, citing *Ivan*, has already observed the distinction between the holding of *Summerlin* and the retroactivity of *Hurst* because of the beyond-a-reasonable-doubt standard. *See Guardado v. Jones*, No. 4:15-cv-256 (N.D. Fla. May 27, 2016) (contrasting *Hurst* to *Ring* and *Summerlin*, because the latter decisions "did not address the requirement for proof beyond a reasonable doubt," and "[t]he Supreme Court has held a proof-beyond-a-reasonable-doubt decision retroactive").

The State's citation to *Powell* in arguing against the federal retroactivity of *Hurst*, *see* State's Resp. at 11-12, is particularly odd considering that in *Powell*, the Delaware Supreme Court applied a retroactivity test that mirrors the federal retroactivity test articulated in *Teague v. Lane*, 489 U.S. 288 (1989), and held that *Hurst* should be applied retroactively in Delaware. *See Powell*, 153 A.3d at 75-76. If anything, *Powell* favors Appellant's position.

Finally, the State mischaracterizes Appellant's arguments under *Montgomery*. Appellant correctly explained that *Montgomery* held that states are bound by the Supremacy Clause to apply constitutional rules retroactively when those rules are

substantive within the meaning of federal law. *See* Appellant's Resp. at 13-20; *Montgomery*, 136 S. Ct. at 728-29 ("[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule."). The *Hurst* decisions announced substantive rules, and the Supremacy Clause requires this Court to apply those rules retroactively.

III. The State abandons any "harmless error" arguments

The State abandons any argument that the *Hurst* error in Appellant's case was harmless by failing to even reference the harmless error doctrine in its response. *See Hoskins*, 75 So. 3d at 257 ("An issue not raised in an initial brief is deemed abandoned.") (citing *Hall*, 823 So. 2d at 763 (Fla. 2002)) (quotation cleaned up). As Appellant argued in his initial filing, the *Hurst* error is not harmless under this Court's precedent in light of the advisory jury's non-unanimous recommendation.

CONCLUSION

For the reasons above and in Appellant's initial response to the Court's order to show cause, this Court should hold that federal law requires the *Hurst* decisions to be applied retroactively and vacate Appellant's death sentence.

Respectfully submitted,

/s/ Billy H. Nolas

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2017, this reply brief was electronically served via the e-portal to Assistant Attorney General Charmaine M. Millsaps at charmaine.millsaps@myfloridalegal.com and capapp@myfloridalegal.com.

/s/ Billy H. Nolas
Billy H. Nolas

EXHIBIT 7

Florida Death-Penalty Appeals Decided in Light of Hurst

Last updated: May 15, 2018

Total number of prisoners whose cases have been reviewed by Florida Supreme Court (or, if relief is granted, by a Circuit Court) in light of *Hurst*: 259

Number of prisoners who have obtained relief under *Hurst*: 128 (49.42%)

Number of prisoners who have been denied relief under *Hurst*: 131 (50.58%)

The Florida Supreme Court has declared that it will apply its decisions in *Hurst v. State* and *Asay v. State*—which held that non-unanimous jury recommendations of death violate the Florida state constitution and the Sixth Amendment of the U.S. Constitution—to new death penalty cases and to older cases in which the direct appeal process was final on or before the U.S. Supreme Court decided *Ring v. Arizona* in June 2002.

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Abdool, Dane	Orange	N	N	10-2	Y	4/6/17
Allred, Andrew	Seminole	N	WAIVED JURY		N	11/16/17
Alston, Pressley Bernard	Duval	Y	N	9-3	N	1/22/18
Altersberger, Joshua Lee	Highlands	N	N	9-3	Y	4/27/17
Anderson, Charles L.	Broward	N	N	8-4	Y	3/9/17
Anderson, Richard	Hillsborough	Y	N	11-1	N	1/26/18
Archer, Robin Lee	Escambia	Y	N	7-5	N	3/17/17
Armstrong, Lancelot Uriley	Broward	N	N	9-3	Y	1/19/17
Asay, Marc	Duval	Y	N	9-3, 9-3	N (**EXECUTED**)	12/22/16
Atwater, Jeffrey Lee	Pinellas	Y	N	11-1	N	1/23/18
Ault, Howard Steven	Broward	N	N	9-3, 10-2	Y	3/9/17
Bailey, Robert J.	Bay	N	N	11-1	Y	7/6/17
Baker, Cornelius	Flagler	N	N	9-3	Y	3/23/17
Banks, Donald	Duval	N	N	10-2	Y	4/20/17
Bargo, Michael Shane	Marion	N	N	10-2	Y	6/29/17
Barnhill, Arthur	Seminole	N	N	9-3	Y	2/20/17
Barwick, Darryl Brian	Bay	Y	Y	12-0	N	2/28/18
Bates, Kayle Barrington	Bay	Y	N	9-3	N	1/22/18
Beasley, Curtis W.	Polk	Y	N	10-2	N	1/23/18
Belcher, James	Duval	N	N	9-3	Y	11/2/17
Bell, Michael	Duval	Y	Y	12-0, 12-0	N	1/29/18
Bevel, Thomas	Duval	N	N	8-4, 12-0	Y*	6/15/17
Booker, Stephen Todd	Duval	Y	N	8-4	N	1/30/18

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Bowles, Gary Ray	Duval	Y	Y	12-0	N	1/29/18
Braddy, Harrel	Miami-Dade	N	N	11-1	Y	6/15/17
Bradley, Brandon Lee	Brevard	N	N	10-2	Y	3/30/17
Bradley, Donald	Clay	Y	N	10-2	N	1/22/18
Branch, Eric Scott	Escambia	Y	N	10-2	N **(EXECUTED)**	1/22/18
Brookins, Elijah	Gadsden	N	N	10-2	Y	4/20/17
Brooks, Lamar	Okaloosa	N	N	9-3, 11-1	Y	3/10/17
Brown, Paul Alfred	Hillsborough	Y	N	7-5	N	1/29/18
Brown, Paul Anthony	Volusia	Y	Y	12-0	N	2/28/18
Burns, Daniel Jr.	Manatee	Y	Y	12-0	N	1/23/18
Buzia, John	Seminole	N	N	8-4	Y	4/6/17
Byrd, Milford Wade	Hillsborough	Y	Unknown	Unknown	N	2/28/18
Calloway, Tavares David	Miami-Dade	N	N	7-5, 7-5, 7-5, 7-5, 7-5	Y	1/26/17
Campbell, John	Citrus	N	N	8-4	Y	8/30/17
Card, James	Bay	N	N	11-1	Y	5/4/17
Carr, Emilia	Marion	N	N	7-5	Y	2/7/17
Carter, Pinkney	Duval	N	N	9-3, 8-4	Y	10/4//17
Caylor, Matthew	Bay	N	N	8-4	Y	5/18/17
Clark, Ronald Wayne Jr.	Duval	Y	N	11-1	N	1/23/18
Cole, Loran	Marion	Y	Y	12-0	N	1/23/18
Cole, Tiffany Ann	Duval	N	N	9-3, 9-3	Y	6/29/17
Conde, Rory	Miami-Dade	N	N	9-3	Y	8/31/17
Consalvo, Robert	Broward	Y	N	11-1	N	1/31/18
Cox, Allen	Lake	N	N	10-2	Y	7/23/17
Cozzie, Steven Anthony	Walton	N	Y	12-0	N	5/11/17
Crain, Willie Seth	Hillsborough	N	Y	12-0	N	4/5/18
Damren, Floyd William	Clay	Y	Y	12-0	N	2/2/18
Darling, Dolan a/k/a Sean Smith	Orange	N	N	11-1	Y	3/29/17
Davis, Adam W.	Hillsborough	N	N	7-5	Y	5/2/17
Davis, Barry T.	Walton	N	N	9-3, 10-2	Y	5/11/17
Davis, Jr., Leon	Polk	N	Y	12-0, 12-0, 8-4	N	11/10/16
Davis, Jr., Leon	Polk	N	WAIVED JURY		N	11/10/16
Davis, Mark Allen	Pinellas	Y	N	8-4	N	1/29/18
Davis, Toney D.	Duval	Y	N	11-1	N	2/17/17
Dennis, Labrant	Miami-Dade	N	N	11-1, 11-1	Y	7/7/17
Deparvine, Williams James	Hillsborough	N	N	8-4, 8-4	Y	4/6/17
Derrick, Samuel Jason	Pasco	Y	N	7-5	N	2/2/18

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Dessaure, Kenneth	Pinellas	N	WAIVED JURY		N	11/16/17
Deviney, Randall	Duval	N	N	8-4	Y	3/23/17
Diaz, Joel	Lee	N	N	9-3	Y	6/15/17
Dillbeck, Donald David	Leon	Y	N	8-4	N	1/24/18
Doorbal, Noel	Miami-Dade	N	N	8-4, 8-4	Y	9/20/17
Doty, Wayne	Bradford	N	N	10-2	Y	8/7/17
Douglas, Luther	Duval	N	N	11-1	Y	6/29/17
Dubose, Rasheem	Duval	N	N	8-4	Y	2/9/17
Durousseau, Paul	Duval	N	N	10-2	Y	1/31/17
Eaglin, Dwight	Charlotte	N	N	8-4, 8-4	Y	4/3/17
England, Richard	Volusia	N	N	8-4	Y	5/22/17
Evans, Paul H.	Indian River	N	N	9-3	Y	3/20/17
Evans, Steven Maurice	Orange	Y	N	11-1	N	1/24/18
Evans, Wydell Jody	Brevard	N	N	10-2	Y	
Finney, Charles	Hillsborough	Y	N	9-3	N	1/26/18
Floyd, Maurice Lamar	Putnam	N	N	11-1	Y	5/17/17
Ford, James D.	Charlotte	Y	N	11-1, 11-1	N	1/23/18
Foster, Charles	Bay	Y	N	8-4	N	1/29/18
Foster, Kevin Don	Lee	Y	N	9-3	N	1/29/18
Fotopoulos, Konstantinos	Volusia	Y	N	8-4, 8-4	N	1/29/18
Frances, David	Orange	N	N	9-3, 10-2	Y	3/29/17
Franklin, Richard P.	Columbia	N	N	9-3	Y	11/23/16
Gamble, Guy R.	Lake	Y	N	10-2	N	1/29/18
Gaskin, Louis	Flagler	Y	N	8-4, 8-4	N	2/28/18
Geralds, Mark Allen	Bay	Y	Y	12-0	N	2/28/18
Glover, Dennis T.	Duval	N	N	10-2	Y	9/14/17
Gonzalez, Leonard	Escambia	N	N	10-2	Y	5/23/17
Gonzalez, Ricardo	Miami-Dade	Y	N	8-4	N	3/23/18
Gordon, Robert R.	Pinellas	Y	N	9-3	N	1/31/18
Gregory, William	Volusia	N	N	7-5, 7-5	Y	8/31/17
Griffin, Michael Allen	Miami-Dade	Y	N	10-2	N	2/2/18
Grim, Norman	Santa Rosa	N	Y	12-0	N	3/29/18
Guardado, Jesse	Walton	N	Y	12-0	N	5/11/17
Gudinas, Thomas Lee	Collier	Y	N	10-2	N	1/30/18
Guzman, James	Volusia	N	N	11-1	Y	2/22/18
Guzman, Victor	Miami-Dade	N	N	7-5	Y	4/6/17
Hall, Donte Jermaine	Lake	N	N	8-4	Y	6/15/17
Hall, Enoch D.	Volusia	N	Y	12-0	N	2/9/17
Hamilton, Richard	Hamilton	Y	N	10-2	N	2/18/18

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Hampton, John	Pinellas	N	N	9-3	Y	5/4/17
Hannon, Patrick	Hillsborough	Y	Y	12-0	N **(EXECUTED)**	11/1/17
Hartley, Kenneth	Duval	Y	N	9-3	N	1/26/18
Hayward, Steven	St. Lucie	N	N	8-4	Y	3/24/17
Heath, Ronald Palmer	Alachua	Y	N	10-2	N	2/28/18
Hernandez, Michael	Santa Rosa	N	N	11-1	Y	5/11/17
Hernandez-Alberto, Pedro	Hillsborough	N	N	10-2, 10-2	Y	5/9/17
Hertz, Gerry	Wakulla	N	N	10-2, 10-2	Y	5/18/17
Heyne, Justin	Brevard	N	N	10-2, 8-4	Y	4/6/17
Hitchcock, James	Orange	Y	N	10-2	N	8/10/17
Hobart, Robert	Santa Rosa	N	N	7-5	Y	2/21/18
Hodges, George Michael	Hillsborough	Y	N	10-2	N	2/2/18
Hodges, Willie James	Escambia	N	N	10-2	Y	3/16/17
Hojan, Gerhard	Broward	N	N	9-3, 9-3	Y	1/31/17
Huggins, John	Orange	N	N	9-3	Y	5/23/17
Hunter, Jerone	Volusia	N	N	10-2, 10-2, 9-3, 9-3	Y	6/16/17
Hurst, Timothy	Escambia	N	N	7-5	Y	10/14/16
Hutchinson, Jeffrey	Okaloosa	N	WAIVED JURY	WAIVED JURY	N	3/15/18
Israel, Connie Ray	Duval	N	N	7-5	Y	3/21/17
Jackson, Etheria Verdell	Duval	Y	N	7-5	N	1/24/18
Jackson, Kenneth R.	Hillsborough	N	N	11-1	Y	3/23/17
Jackson, Michael James	Duval	N	N	8-4, 8-4	Y	6/9/17
Jackson, Ray	Volusia	N	N	9-3	Y	4/24/17
Jeffries, Kevin G.	Bay	N	N	10-2	Y	7/13/17
Jeffries, Sonny Ray	Orange	Y	N	11-1	N	1/26/18
Jennings, Brandy Bain	Collier	Y	N	10-2, 10-2, 10-2	N	1/29/18
Johnson, Emanuel	Sarasota	Y	N	8-4, 10-2	N	2/2/18
Johnson, Paul Beasley	Polk	N	N	11-1, 11-1, 11-1	Y	12/1/16
Johnson, Richard Allen	St. Lucie	N	N	11-1	Y	3/24/17
Johnson, Ronnie	Miami-Dade	Y	N	7-5, 9-3	N	3/27/18
Johnston, Ray	Hillsborough	N	N	11-1	Y	7/21/17
Johnston, Ray	Hillsborough	N	Y	12-0	N	7/21/17
Jones, Henry Lee	Brevard	N	Y	12-0	N	3/2/17
Jones, Marvin Burnett	Duval	Y	N	9-3	N	1/22/18
Jones, Victor	Miami-Dade	Y	Y/N	10-2, 12-0	N	9/28/17
Jordan, Joseph	Volusia	N	N	10-2	Y	8/22/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Kaczmar, III, Leo L.	Clay	N	Y	12-0	N	1/31/17
Kelley, William H.	Highlands	Y	N	8-3 [not a typo]	N	1/26/18
King, Cecil	Duval	N	N	8-4	Y	7/12/17
King, Michael L.	Sarasota	N	Y	12-0	N	1/26/17
Kirkman, Vahtiece	Brevard	N	Y	10-2	Y	1/11/18
Knight, Richard	Broward	N	Y	12-0, 12-0	N	1/31/17
Kocaker, Genghis	Pinellas	N	N	11-1	Y	10/6/17
Kokal, Gregory Alan	Duval	Y	Y	12-0	N	1/24/18
Kopsho, William M.	Marion	N	N	10-2	Y	1/19/17
Krawczuk, Anton	Duval	Y	Y	12-0	N	1/31/18
Lamarca, Anthony	Pinellas	Y	N	11-1	N	1/30/18
Lambrix, Cary Michael	Glades	Y	N	8-4, 10-2	N **(EXECUTED)**	9/29/17
Lawrence, Gary	Santa Rosa	Y	N	9-3	N	2/2/18
Lebron, Joel	Osceola	N	N	7-5	Y	4/20/17
Lightbourne, Ian	Marion	Y	N	Unrecorded	N	1/26/18
Long, Robert Joe	Hillsborough	Y	Y	12-0	N	1/29/18
Lucas, Harold Gene	Lee	Y	N	11-1	N	1/24/18
Marquard, John	St. Johns	Y	Y	12-0	N	1/24/18
Martin, David	Clay	N	N	9-3	Y	7/13/17
Matthews, Douglas	Volusia	N	N	10-2	Y	12/5/17
McCoy, Richard (aka Jamil Rashid)	Duval	N	N	7-5	Y	9/6/17
McCoy, Thomas	Walton	N	N	11-1	Y	11/8/17
McGirth, Renaldo Devon	Marion	N	N	11-1	Y	1/26/17
McKenzie, Norman Blake	St. Johns	N	N	10-2, 10-2	Y	6/19/17
McLean, Derrick	Orange	N	N	9-3	Y	4/24/17
McMillian, Justin	Duval	N	N	10-2	Y	4/13/17
Melton, Antonio Lebaron	Escambia	Y	N	8-4	N	2/2/18
Mendoza, Marbel	Miami-Dade	Y	N	7-5	N	1/30/18
Merck, Jr., Troy	Pinellas	N	N	9-3	Y	5/5/17
Middleton, Dale	Okeechobee	N	Y	12-0	N	3/9/17
Miller, David Jr.	Duval	Y	N	7-5	N	1/31/18
Miller, Lionel Michael	Orange	N	N	11-1	Y	5/8/17
Morton, Alvin	Pasco	Y	N	11-1, 11-1	N	2/2/18
Morris, Dontae	Hillsborough	N	Y	12-0, 12-0	N	4/27/17
Morris, Dontae	Hillsborough	N	N	10-2	Y	1/11/18
Morris, Robert D.	Polk	Y	N	8-4	N	1/26/18
Mosley, John F.	Duval	N	N	8-4	Y	12/22/16
Mullens, Khadafy	Pinellas	N	WAIVED JURY		N	6/16/16

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Murray, Gerald Delane	Duval	N	N	11-1	Y	4/4/17
Nelson, Joshua D.	Lee	Y	Y	12-0	N	1/31/18
Nelson, Micah	Polk	N	N	9-3	Y	3/8/17
Newberry, Rodney	Duval	N	N	8-4	Y	4/6/17
Oats, Jr. Sonny Boy	Marion	Y	UNKNOWN		N	5/25/17
Occhicone, Dominick A.	Pasco	Y	N	7-5	N	1/30/18
Okafor, Bessman	Orange	N	N	11-1	Y	6/8/17
Oliver, Terence Tabius	Brevard	N	Y	12-0, 12-0	N	4/6/17
Orme, Roderick	Bay	N	N	11-1	Y	3/30/17
Overton, Thomas M.	Monroe	Y	N	8-4, 9-3	N	2/2/18
Pace, Bruce Douglas	Santa Rosa	Y	N	7-5	N	1/30/18
Pagan, Alex	Broward	N	N	7-5, 7-5	Y	2/1/18
Parker, J.B.	Martin	N	N	11-1	Y	4/20/17
Partin, Phillup Alan	Pasco	N	N	9-3	Y	3/27/17
Pasha, Khalid	Hillsborough	N	N	11-1, 11-1	Y	5/11/17
Peterka, Daniel Jon	Okaloosa	Y	N	8-4	N	1/22/18
Peterson, Robert Earl	Duval	N	N	7-5	Y	7/6/17
Pham, Tai	Seminole	N	N	10-2	Y	3/22/17
Phillips, Galante	Duval	N	N	7-5	Y	4/20/17
Phillips, Harry Franklin	Miami-Dade	Y	N	7-5	N	1/22/18
Philmore, Lenard James	Martin	N	Y	12-0	N	1/25/18
Pietri, Norberto	Palm Beach	Y	N	8-4	N	2/2/18
Poole, Mark	Polk	N	N	11-1	Y	3/31/17
Pope, Thomas Dewey	Broward	Y	N	9-3	N	2/28/18
Puiatti, Carl	Pasco	Y	N	11-1	N	1/23/18
Quince, Kenneth Darcell	Volusia	Y	WAIVED JURY		N	1/18/18
Raleigh, Bobby Allen	Volusia	Y	Y	12-0, 12-0	N	2/28/18
Reaves, William	Indian River	Y	N	10-2	N	5/2/18
Reynolds, Michael	Seminole	N	Y	12-0, 12-0	N	4/5/18
Rhodes, Richard Wallace	Pinellas	Y	N	10-2	N	1/23/18
Rigterink, Thomas William	Polk	N	N	7-5, 7-5	Y	4/6/17
Rimmer, Robert	Broward	N	N	9-3, 9-3	Y	6/29/17
Robards, Richard	Pinellas	N	N	7-5, 7-5	Y	4/6/17
Rodgers, Jeremiah	Santa Rosa	N	WAIVED JURY		N	2/8/18
Rodgers, Theodore	Orange	N	N	8-4	Y	4/3/17
Rogers, Glen Edward	Hillsborough	Y	Y	12-0	N	1/30/18
Rodriguez, Manuel Antonio	Miami-Dade	Y	Y	12-0, 12-0, 12-0	N	1/31/18
San Martin, Pablo	Miami-Dade	Y	N	9-3	N	2/28/18

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Schoenwetter, Randy	Brevard	N	N	10-2, 9-3	Y	4/7/17
Seibert, Michael	Broward	N	N	9-3	Y	6/22/17
Serrano, Nelson	Polk	N	N	9-3, 9-3, 9-3, 9-3	Y	5/11/17
Sexton, John	Pasco	N	N	10-2	Y	6/29/17
Silvia, William	Seminole	N	N	11-1	Y	2/20/17
Simmons, Eric Lee	Lake	N	N	8-4	Y	12/22/16
Sireci, Henry Perry	Orange	Y	N	11-1	N	1/31/18
Sliney, Jack R.	Charlotte	Y	N	7-5	N	1/31/18
Smith, Corey	Miami-Dade	N	N	9-3, 10-2	Y	3/16/17
Smith, Joseph	Sarasota	N	N	10-2	Y	7/13/17
Smith, Stephen V.	Charlotte	N	Y	9-3	Y	4/21/17
Smithers, Samuel	Hillsborough	N	Y	12-0, 12-0	N	3/29/18
Snelgrove, David B.	Flagler	N	N	8-4, 8-4	Y	5/11/17
Sochor, Dennis	Broward	Y	N	10-2	N	1/30/18
Stein, Steven Edward	Duval	Y	N	10-2	N	1/31/18
Stephens, Jason Demetrius	Duval	Y	N	9-3	N	1/22/18
Stewart, Kenneth Allen	Hillsborough	Y	N	10-2	Y	4/25/17
Stewart, Kenneth Allen	Hillsborough	Y	N	10-2	N	1/26/18
Sweet, William Earl	Duval	Y	N	10-2	N	1/24/18
Suggs, Ernest	Walton	Y	N	7-5	N	3/17/17
Tanzi, Michael	Monroe	N	Y	12-0	N	4/5/18
Taylor, John Calvin	Clay	N	N	10-2	Y	10/12/17
Taylor, Perry	Hillsborough	Y	N	8-4	N	5/3/18
Taylor, Steven Richard	Duval	Y	N	10-2	N	1/24/18
Taylor, William Kenneth	Hillsborough	N	Y	12-0	N	4/5/18
Thomas, William Gregory	Duval	Y	N	11-1	N	1/24/18
Trease, Robert J.	Sarasota	Y	N	11-1	N	1/24/18
Trepal, George	Polk	Y	N	9-3	N	1/26/18
Trotter, Melvin	Manatee	Y	N	11-1	N	1/26/18
Troy, John	Sarasota	N	N	11-1	Y	6/13/17
Truehill, Quentin	St. Johns	N	Y	12-0	N	2/23/17
Tundidor, Randy W.	Broward	N	Y	12-0	N	4/27/17
Turner, James Daniel	St. Johns	N	N	10-2	Y	6/19/17
Twilegar, Mark	Lee	Y	WAIVED JURY		N	11/2/17
Victorino, Troy	Volusia	N	N	10-2, 10-2, 9-3, 7-5	Y	6/14/17
Wade, Alan L.	Duval	N	N	11-1, 11-1	Y	5/1/17
Walls, Frank	Okaloosa	Y	Y	12-0	N	1/22/18

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Wheeler, Jason	Lake	N	N	10-2	Y	5/23/17
White, Dwayne	Seminole	N	N	8-4	Y	3/30/17
Whitfield, Ernest	Sarasota	Y	N	7-5	Y	1/30/18
White, William Melvin	Orange	N	N	10-2	Y	4/20/17
Whitton, Gary Richard	Walton	Y	Y	12-0	N	1/31/18
Willacy, Chadwick	Brevard	Y	N	11-1	N	1/23/18
Williams, Donald Otis	Lake	N	N	9-3	Y	1/19/17
Williams , Ronnie Keith	Broward	N	N	10-2	Y	6/29/17
Windom, Curtis	Orange	Y	Y	12-0, 12-0, 12-0	N	1/23/18
Wood, Zachary Taylor	Washington	N	Y	12-0	Y**	1/31/17
Woodel, Thomas	Polk	N	N	7-5	Y	8/18/17
Zack, Michael Duane	Escambia	Y	N	11-1	N	6/15/17
Zakrzewski, Edward	Okaloosa	Y	N	7-5, 7-5, 6-6	N	5/25/17
Zommer, Todd	Osceola	N	N	10-2	Y	4/13/17

* The Florida Supreme Court granted relief under *Hurst* on Bevel's non-unanimous death sentence, but granted relief based on ineffective assistance of counsel on Bevel's unanimous death sentence.

** The Florida Supreme Court noted that Wood's sentence would not have been harmless under *Hurst* because it struck two of the three aggravating circumstances found by the trial court; however, the court vacated the death sentence and imposed a life sentence under its statutory review for proportionality. Not counted in total.

For more background on the Florida legislative and court actions related to the jury unanimity issue, see ***Hurst v. Florida* Background**.

To check on the status of cases involving Florida death-row prisoners with non-unanimous jury recommendations for death whose sentences became final after the U.S. Supreme Court's June 2002 decision in *Ring v. Arizona*, see **this chart**.

Hannah Gorman, with the Florida Center for Capital Representation at Florida International University, created the pie chart below (November 16, 2017) based on her analysis of Florida death sentences that have been or will be overturned based on *Hurst*, as well as sentences that have been or will be affirmed because they either (A) became final before *Ring* (i.e., based on the date of their appeal) or (B) were presumed harmless based on a unanimous jury verdict or the defendant's waiver of a jury sentence. This chart includes prisoners who have had their death sentences affirmed by Circuit Courts. According to this information, there are a total of 377 prisoners who were sentenced under the unconstitutional sentencing scheme, but only 42% (157) of Florida death-row prisoners who were sentenced under that scheme will be entitled to relief.

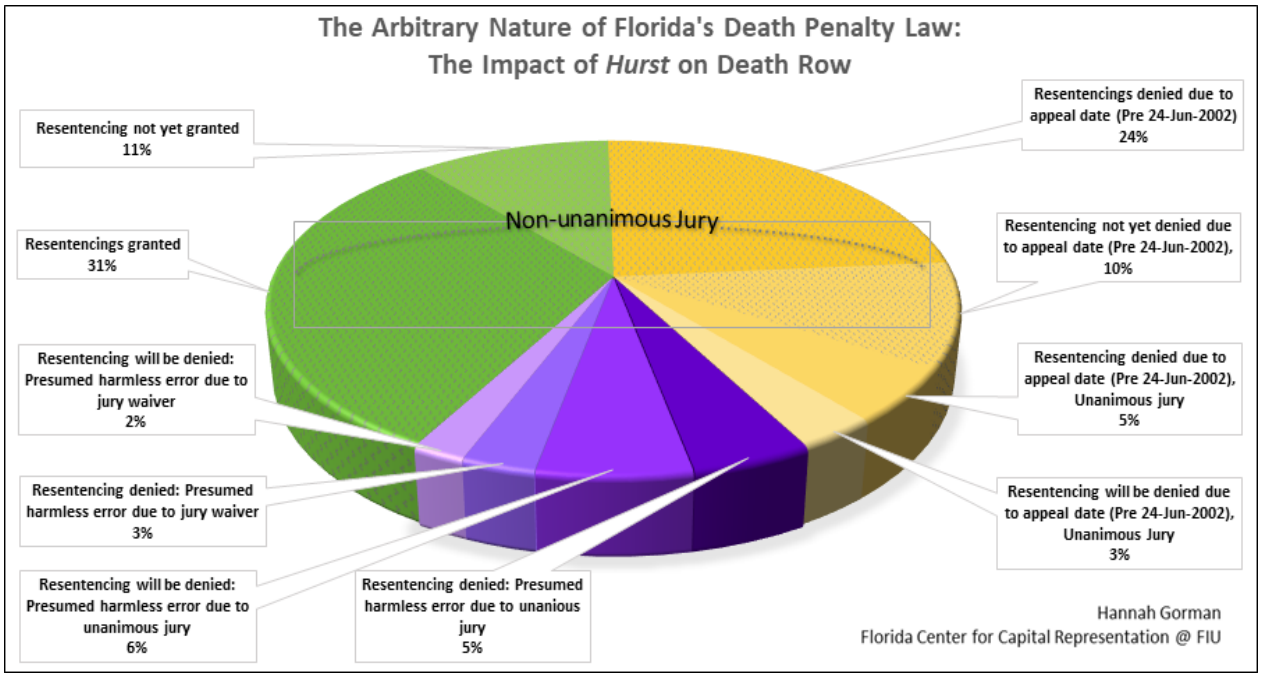
The Arbitrary Nature of Florida's Death Penalty Law:
The Impact of *Hurst* on Death Row
Non-unanimous Jury
Resentencing not yet granted 11%
Resentencings granted 31%
Resentencing will be denied: Presumed harmless error due to jury waiver 2%
Resentencing denied: Presumed harmless error due to jury waiver 3%
Resentencing will be denied: Presumed harmless error due to unanimous jury 6%
Resentencing denied: Presumed harmless error due to unanious jury 5%
Resentencings denied due to appeal date (Pre 24-Jun-2002) 24%
Resentencing not yet denied due to appeal date (Pre 24-Jun-2002), 10%
Resentencing denied due to appeal date (Pre 24-Jun-2002), Unanimous jury 5%
Resentencing will be denied due to appeal date (Pre 24-Jun-2002), Unanimous Jury 3%
Hannah Gorman
Florida Center for Capital Representation @ FIU

EXHIBIT 8

1. *Alston v. State*, Nos. SC17-499, SC17-983, 2018 WL 2251331 (Fla. May 17, 2018)
2. *Bates v. State*, 238 So. 3d 98 (Fla. 2018)
3. *Bradley v. Jones*, 238 So. 3d 95 (Fla. 2018)
4. *Branch v. State*, 234 So. 3d 548 (Fla. 2018)
5. *Jones v. State*, 234 So. 3d 545 (Fla. 2018)
6. *Peterka v. State*, 237 So. 3d 903 (Fla. 2018)
7. *Phillips v. State*, 234 So. 3d 547 (Fla. 2018)
8. *Stephens v. State*, 238 So. 3d 94 (Fla. 2018)
9. *Suggs v. State*, 234 So. 3d 546 (Fla. 2018)
10. *Walls v. State*, 238 So. 3d 96 (Fla. 2018)
11. *Atwater v. State*, 234 So. 3d 550 (Fla. 2018)
12. *Beasley v. State*, 234 So. 3d 553 (Fla. 2018)
13. *Burns v. State*, 234 So. 3d 555 (Fla. 2018)
14. *Clark v. State*, 238 So. 3d 99 (Fla. 2018)
15. *Cole v. State*, 234 So. 3d 644 (Fla. 2018)
16. *Ford v. State*, 237 So. 3d 904 (Fla. 2018)
17. *Puiatti v. State*, 234 So. 3d 551 (Fla. 2018)
18. *Rhodes v. State*, 234 So. 3d 554 (Fla. 2018)
19. *Willacy v. State*, 238 So. 3d 100 (Fla. 2018)
20. *Windom v. State*, 234 So. 3d 556 (Fla. 2018)
21. *Dillbeck v. State*, 234 So. 3d 558 (Fla. 2018)
22. *Evans v. State*, No. SC17-869, 2018 WL 524796 (Fla. 2018)
23. *Jackson v. State*, 237 So. 3d 905 (Fla. 2018)

24. *Kokal v. State*, 237 So. 3d 907 (Fla. 2018)

25. *Lucas v. State*, 234 So. 3d 647 (Fla. 2018)

26. *Marquard v. State*, 234 So. 3d 560 (Fla. Jan. 24, 2018)

27. *Sweet v. State*, 234 So. 3d 646 (Fla. 2018)

28. *Taylor v. State*, 234 So. 3d 649 (Fla. 2018)

29. *Thomas v. State*, 234 So. 3d 559 (Fla. 2018)

30. *Trease v. State*, No. SC17-686, 2018 WL 1959603 (Fla. Apr. 26, 2018)

31. *Anderson v. State*, 235 So. 3d 277 (Fla. 2018)

32. *Finney v. State*, 235 So. 3d 279 (Fla. 2018)

33. *Hartley v. State*, 237 So. 3d 908 (Fla. 2018)

34. *Jeffries v. State*, 235 So. 3d 283 (Fla. 2018)

35. *Kelley v. State*, 235 So. 3d 280 (Fla. 2018)

36. *Lightbourne v. State*, 235 So. 3d 285 (Fla. 2018)

37. *Morris v. State*, 236 So. 3d 324 (Fla. 2018)

38. *Stewart v. State*, 235 So. 3d 798 (Fla. 2018)

39. *Trepal v. State*, 235 So. 3d 281 (Fla. 2018)

40. *Trotter v. State*, 235 So. 3d 284 (Fla. 2018)

41. *Bell v. State*, 235 So. 3d 287 (Fla. 2018)

42. *Bowles v. State*, 235 So. 3d 292 (Fla. 2018)

43. *Brown v. State*, 235 So. 3d 289 (Fla. 2018)

44. *Davis v. State*, 235 So. 3d 295 (Fla. 2018)

45. *Foster v. State*, 235 So. 3d 290 (Fla. 2018)

46. *Foster v. State*, 235 So. 3d 294 (Fla. 2018)

47. *Fotopoulos v. State*, 237 So. 3d 911 (Fla. 2018)

48. *Gamble v. State*, 235 So. 3d 288 (Fla. 2018)

49. *Jennings v. State*, 237 So. 3d 909 (Fla. 2018)

50. *Long v. State*, 235 So. 3d 293 (Fla. 2018)

51. *Booker v. Jones*, 235 So. 3d 298 (Fla. 2018)

52. *Davis v. Jones*, 235 So. 3d 301 (Fla. 2018)

53. *Gudinas v. State*, 235 So. 3d 303 (Fla. 2018)

54. *Lamarca v. State*, 237 So. 3d 914 (Fla. 2018)

55. *Mendoza v. State*, 235 So. 3d 302 (Fla. 2018)

56. *Occhicone v. State*, 235 So. 3d 299 (Fla. 2018)

57. *Pace v. State*, 237 So. 3d 912 (Fla. 2018)

58. *Rogers v. State*, 235 So. 3d 306 (Fla. 2018)

59. *Sochor v. State*, 235 So. 3d 304 (Fla. 2018)

60. *Whitfield v. State*, 235 So. 3d 297 (Fla. 2018)

61. *Consalvo v. State*, 235 So. 3d 307 (Fla. 2018)

62. *Gordon v. State*, 235 So. 3d 311 (Fla. 2018)

63. *Krawczuk v. State*, 237 So. 3d 915 (Fla. 2018)

64. *Miller v. Jones*, 237 So. 3d 921 (Fla. 2018)

65. *Nelson v. State*, 235 So. 3d 308 (Fla. 2018)

66. *Rodriguez v. State*, 237 So. 3d 918 (Fla. 2018)

67. *Sireci v. State*, 237 So. 3d 916 (Fla. 2018)

68. *Sliney v. State*, 235 So. 3d 310 (Fla. 2018)

69. *Stein v. State*, 237 So. 3d 919 (Fla. 2018)

70. *Whitton v. State*, 238 So. 3d 724 (Fla. 2018)

71. *Damren v. State*, 236 So. 3d 230 (Fla. 2018)

72. *Derrick v. State*, 236 So. 3d 231 (Fla. 2018)

73. *Griffin v. State*, 236 So. 3d 237 (Fla. 2018)

74. *Hodges v. State*, 236 So. 3d 241 (Fla. 2018)

75. *Johnson v. State*, 236 So. 3d 232 (Fla. 2018)

76. *Lawrence v. State*, 236 So. 3d 240 (Fla. 2018)

77. *Melton v. State*, 236 So. 3d 234 (Fla. 2018)

78. *Morton v. State*, 236 So. 3d 242 (Fla. 2018)

79. *Overton v. State*, 236 So. 3d 238 (Fla. 2018)

80. *Pietri v. State*, 236 So. 3d 235 (Fla. 2018)