No. _____

OCTOBER TERM 2018

IN THE SUPREME COURT OF THE UNITED STATES

JUAN DAVID RODRIGUEZ,

Petitioner

v.

STATE OF FLORIDA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

CAPITAL CASE

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CAPITAL CASE

CONTEXT

In *Hurst v. State*, 202 So. 3d 40, 57-58 (Fla. 2016), the Florida Supreme Court held:

> [A]ll the findings necessary for imposition of a death sentence are "elements" that must be found by a jury, and Florida law has long required that jury verdicts must be unanimous. Accordingly, we reiterate our holding that before the trial judge may consider imposing a sentence of death, the jury in a capital case must **unanimously and expressly find all the aggravating factors** that were proven beyond a reasonable doubt, **unanimously find that the aggravating factors are sufficient** to impose death, **unanimously find that the aggravating factors outweigh** the mitigating circumstances, and **unanimously recommend a sentence of death**. We equally emphasize that by so holding, we do not intend to diminish or impair the jury's right to recommend a sentence of life even if it finds aggravating factors were proven, were sufficient to impose death, and that they outweigh the mitigating circumstances. *See Brooks v. State*, 762 So.2d 879, 902 (Fla.2000).

In *Card v. Jones*, 219 So. 3d 47, 48 (Fla. 2017), the Florida Supreme Court on the basis of *Hurst v. State* vacated a death sentence and ordered a new proceeding at which a jury would have to unanimously find the elements of capital murder proven by the State beyond a reasonable doubt before a death sentence could be reimposed. The homicide at issue in *Card v. Jones* was committed in 1981. *See Card v. State*, 453 So. 2d 17, 18 (Fla. 1984).

In *Victorino v. State*, 241 So. 3d 48 (Fla. 2018), the Florida Supreme Court rejected an ex post facto challenge to holding a new proceeding at which the jury would be required to find the elements of capital murder beyond a reasonable doubt:

> Florida's new capital sentencing scheme, which requires the jury to unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that sufficient aggravating factors exist to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death before the trial judge may consider imposing a sentence of death, see § 921.141(2), Fla. Stat. (2017), neither alters the definition of criminal conduct nor increases the penalty by which the crime of first-degree murder is punishable. Thus, it does not constitute an ex post facto law, and Victorino is therefore not entitled to relief.

Victorino v. State, 241 So. 3d at 50. The homicides at issue in *Victorino v. State* occurred in 2004. *Victorino v. State*, 23 So. 3d 87 (Fla. 2009).

QUESTIONS PRESENTED

1. Given that the elements of capital murder identified by the Florida Supreme Court in *Hurst v. State* are being applied in a prosecution for a 1981 homicide, can Petitioner's death sentences remain intact given that his jury did not unanimously find the State had proven the elements of capital murder beyond a reasonable doubt in his prosecution for a 1989 homicide?

2. Does Florida's substantive criminal law identifying the elements of capital murder as set forth in *Hurst v. State* govern in the criminal prosecution of Petitioner for two 1994 homicides and invalidate his death sentences?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, JUAN DAVID RODRIGUEZ, respectfully petitions for a writ of certiorari to review the errors of the Florida Supreme Court.

OPINION BELOW

The Florida Supreme Court's opinion denying relief is published and reported as *Rodriguez v. State,* 219 So. 3d 751 (Fla. 2017) (Appendix A). The order denying the motion for rehearing is referenced as *Rodriguez v. State*, Order, Case No. SC15-1795 (June 15, 2017). (Appendix B). The Florida Supreme Court order denying relief to the Petition for Writ of Habeas Corpus is referenced as *Rodriguez v. Jones*, Case. No. SC18-352, Order, (April 6, 2018). (Appendix C).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part:

> No persons . . . shall . . . be deprived of life, liberty or property, without due process of law.

The Eighth Amendment to the Constitution of the United States provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the Constitution of the United States provides in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

PROCEDURAL HISTORY

The Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida entered the judgments of conviction and sentence under consideration.

Mr. Rodriguez was indicted by a grand jury in Dade County, Florida, on May 3, 1989, and charged with first-degree murder, armed robbery, conspiracy to commit a felony, attempted armed robbery, armed burglary with an assault, aggravated assault and attempted murder in the first degree.

Jury trial commenced in January 1990. The jury found Mr. Rodriguez guilty on all counts. On March 1, 1990, the jury recommended a death sentence by a vote of twelve to zero for the charge of first-degree murder. On March 28, 1990, the Circuit Court of the Eleventh Judicial Circuit imposed judgments of conviction and sentence of death on Mr. Rodriguez. On direct appeal to the Florida Supreme Court, Mr. Rodriguez's convictions and sentences were affirmed. *Rodriguez v. State*, 609 So. 2d 493 (Fla. 1992), *cert. denied*, 510 U.S. 830 (1993).

On September 12, 1994, Mr. Rodriguez filed his initial Rule 3.850 motion, which was subsequently amended. At the Huff hearing on March 13, 1998, the State conceded an evidentiary hearing on the issue of ineffective assistance of counsel for failure to raise his mental retardation at Mr. Rodriguez's penalty phase.

Following a limited evidentiary hearing on the issue of ineffective assistance of trial counsel, the lower court denied Mr. Rodriguez relief under Florida Rule of Criminal Procedure 3.850. Mr. Rodriguez appealed to the Florida Supreme Court.

During the pendency of that appeal, in October 2002, the Florida Supreme Court temporarily relinquished jurisdiction back to the state circuit court for the

purpose of an evidentiary hearing on Mr. Rodriguez's claim dealing with a sentencing order issue. Following that evidentiary hearing, the lower court again denied Mr. Rodriguez relief. Mr. Rodriguez appealed the denial to the Florida Supreme Court.

During the pendency of Mr. Rodriguez's appeal, the Florida Supreme Court promulgated Fla. R. Crim. P. 3.203, effective October 1, 2004, providing the procedures to be employed for defendants seeking to raise mental retardation as a bar to their execution. *See Atkins v. Virginia*, 536 U.S. 304 (2002). Thereafter, on November 30, 2004, Mr. Rodriguez requested that the Florida Supreme Court relinquish jurisdiction to the state circuit court for a determination of mental retardation pursuant to the procedural mandates of Rule 3.203 (d)(4)(E).

The Motion to Relinquish Jurisdiction remained pending until May 26, 2005. On that date, the Florida Supreme Court issued an opinion affirming the lower court's denial of Mr. Rodriguez's request for post-conviction relief. *Rodriguez v. State*, 919 So. 2d 1252 (Fla. 2005). On the same day, the Florida Supreme Court also entered an order denying Mr. Rodriquez's request to relinquish jurisdiction but without prejudice to Mr. Rodriguez filing a Rule 3.203 motion in the Circuit Court within sixty (60) days of the appeal becoming final.

Following the circuit court's initial summary denial of the motion, Mr. Rodriguez appealed to the Florida Supreme Court, and on October 3, 2007, the Florida Supreme Court issued an order reversing the summary denial and remanding the case back to the circuit court for an evidentiary hearing pursuant to *Atkins*. An evidentiary hearing was conducted on March 27, June 22, 23, 25, 26, 29, 30 and July

1, 2009. Following the evidentiary hearing, on January 3rd, 2011, the circuit court entered an order denying Mr. Rodriguez's claim. On February 6, 2013 the Florida Supreme Court issued an order denying relief without hearing any oral argument in the appeal from the denial of relief.

A Petition for Writ of Habeas Corpus was filed in the United States District Court for the Southern District of Florida on December 19, 2013. Following litigation, the Petition was denied on January 4th, 2016. The District Court found that trial counsel had rendered deficient performance at Mr. Rodriguez's penalty phase, but found that Mr. Rodriguez had not been prejudiced. The District Court granted a Certificate of Appealability as to Claim III (ineffective assistance of trial counsel at Mr. Rodriguez's penalty phase), and also as to Claim IV (the determination that he was not intellectually disabled was an unreasonable determination of fact pursuant to AEDPA). The appeal is currently pending before the United States Court of Appeals for the Eleventh Circuit.

In the meantime, on May 26 2015, Mr. Rodriguez filed a successive motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851, predicated on this Court's decision in *Hall v. Florida*, 134 S. Ct. 1986 (2014). The motion was summarily denied on August 14, 2015 and an appeal timely taken to the Florida Supreme Court. Before the briefing commenced, Mr. Rodriguez filed a motion to relinquish jurisdiction to the circuit court in order to file a Rule 3.851 motion predicated on *Hurst v. Florida* 136 S. Ct 616 (2016). The motion was denied on February 19th 2016. Mr. Rodriguez then moved for supplemental briefing based on *Hurst*, which motion was granted, and

supplemental briefs were filed. The Florida Supreme Court denied relief as to both issues on April 20th 2017. The motion for rehearing was denied on June 15th 2017.

On March 6, 2018 Mr. Rodriguez filed a petition for Writ of Habeas Corpus in the Florida Supreme Court, predicated on the Florida Legislature's enactment of Fla. Stat 2017-1. The petition was denied on April 6, 2018. This petition for certiorari follows.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI REVIEW IN ORDER TO ADDRESS THE FLORIDA SUPREME COURT'S READING OF THE FLORIDA CAPITAL SENTENCING STATUTE AS IDENTIFYING ELEMENTS OF CAPITAL MURDER.

Identifying the facts or elements necessary to increase the authorized punishment is a matter of substantive law. *Alleyne v. United States*, 570 U.S. 99, 113-14 (2013) ("Defining facts that increase a mandatory statutory minimum to be **part of the substantive offense** enables the defendant to predict the legally applicable penalty from the face of the indictment.") (emphasis added).

A court decision identifying **the elements of a statutorily defined criminal offense constitutes substantive law** that dates back to the enactment of the statute. *Bousley v. United States*, 523 U.S. 614, 625 (1998) (Stevens, J., concurring in part and dissenting in part) ("This case does not raise any question concerning the possible retroactive application of a new rule of law, *cf. Teague v. Lane*, 489 U.S. 288 (1989), because our decision in *Bailey v. United States*, 516 U.S. 137 (1995), did not change the law. **It merely explained what § 924(c) had meant ever since the statute was**

enacted. The fact that a number of Courts of Appeals had construed the statute differently is of no greater legal significance than the fact that 42 U.S.C. § 1981 had been consistently misconstrued prior to our decision in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989).") (emphasis added). "A judicial construction of a statute is an authoritative statement of what the statute meant **before as well as after the decision** of the case giving rise to that construction." *Rivers v. Roadway Exp., Inc.,* 511 U.S. 298, 312-13 (1994) (emphasis added).

In *Fiore v. White*, 531 U.S. 225, 226 (2001), this Court addressed the import of the Due Process Clause in the context the substantive law defining a criminal offense:

> We granted certiorari in part to decide when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral review.

Under *In re Winship*, 397 U.S. 358 (1970), each element of a criminal offense must be found proven beyond a reasonable doubt.

The Florida Supreme Court has made it clear that these elements of capital murder are longstanding when it rejected an ex post facto challenge to holding them applicable in a homicide that occurred 12 years before *Hurst v. State* issued and 13 years before Chapter 2017-1 was enacted. In *Victorino v. State*, 241 So. 3d at 50, the Florida Supreme Court explained:

> Florida's new capital sentencing scheme, which requires the jury to unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that sufficient aggravating factors exist to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death before the trial judge may consider imposing a

> sentence of death, see § 921.141(2), Fla. Stat. (2017), neither alters the definition of criminal conduct nor increases the penalty by which the crime of first-degree murder is punishable. Thus, it does not constitute an ex post facto law, and Victorino is therefore not entitled to relief.

The homicides at issue in *Victorino v. State* occurred in 2004. *Victorino v. State*, 23 So. 3d 87 (Fla. 2009).

Because of the widespread problem arising in Florida capital cases in light of the statutory construction set forth in *Hurst v. State*, this Court should issue the writ. As it stands now, Rodriguez has received a death sentence even though he has not been convicted of capital murder as that crime has been defined under Florida substantive criminal law.

Certiorari review is warranted here to determine whether the Due Process Clause requires the substantive criminal law set forth in *Hurst v. State* and applied to a 1981 homicide in *Card v. Jones* to also be applied to Rodriguez's criminal prosecution for a 1989 homicide.

CONCLUSION

Based on the foregoing, Petitioner submits that certiorari review is warranted to review the decision of the Florida Supreme Court in this cause.

Respectfully Submitted,

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