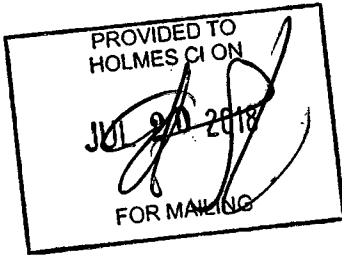


No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

HARLEY BLEVINS, SR. - PETITIONER

VS.

STATE OF FLORIDA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

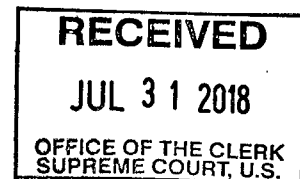
HARLEY BLEVINS, SR.

HOLMES CORRECTIONAL INSTITUTION

3142 THOMAS DRIVE

BONIFAY, FLORIDA 32425

pro se



QUESTION(S) PRESENTED

1. Is Florida's Prison Releasee Reoffender Act, which nullifies a Criminal Punishment Code (CPC) sentence, unconstitutional and a violation of the Sixth Amendment of the United States Constitution in light of the recent U.S. Supreme Court decision in *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016) and the holdings in *Alleyne v. United States*, 133 S.Ct. 2151; 186 L.Ed. 2d 314 and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000), when the jury's verdict only authorized a CPC sentence and the critical findings necessary to enhance the sentence were determined by the judge and not the jury.
2. Is the U.S. Supreme Court decision in *Almendarez-Torres*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed. 2d 350 (1998) and its narrow exception of a "prior conviction" created in *Apprendi* and *Alleyne* continue to be valid, especially as applied to Florida's Prison Releasee Reoffender Act when a defendants previous date of release from prison, a critical finding necessary to impose an enhanced sentence, is considered a "prior conviction" under *Almendarez-Torres* and Florida law.

LIST OF ALL PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties do not appear in the caption of the case on the cover page. A list of all parties to proceeding in the court whose judgment is the subject of this petition is as follows:

Pam Bondi, Attorney General, State of Florida, PL-01 The Capitol,
Tallahassee, Florida 32399-1050

TABLE OF CONTENTS

QUESTION(S) PRESENTED.....	2
LIST OF ALL PARTIES.....	3
INDEX TO APPENDICES.....	4
TABLES OF AUTHORITIES CITED	4
OPINIONS BELOW.....	6
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	8
STATEMENT OF THE CASE.....	9
REASONS FOR GRANTING OF THE WRIT.....	10
CONCLUSION.....	12
PROOF OF SERVICE	14

INDEX TO APPENDICES

APPENDIX A – Decision of Florida’s Fourth District Court of Appeal (4D13-0038)

APPENDIX B – Decision of the Circuit Court of the Fifteenth Judicial Circuit
In and For Palm Beach County, Florida. (2001-CF-5451)

APPENDIX C – Motion To Correct Illegal Sentence

APPENDIX D – Initial Brief of Appellant to DCA from denial of Motion to Correct
Illegal Sentence.

TABLES OF AUTHORITIES CITED

Cases

<i>Alleyne v. United States</i> , 133 S.Ct. 2151; 186 L.Ed. 2d 314.....	2, 11, 12
<i>Almendarez-Torres</i> , 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed. 2d 350 (1998)	2, 12
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000)	2, 11
<i>Blevins v. State</i> , 872 So.2d 911 (Fla. 4 th DCA 2004).....	9
<i>Chapa v. State</i> , 159 So.3d 361, 362 (Fla. 4 th DCA 2015)	12
<i>Hurst v. Florida</i> , 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016)	2
<i>Hurst v. State</i> , 202 So.3d 40 (Fla. 2016).....	12
<i>United States v. Stone</i> , 306 F.3d 241, 243 (5th Cir. 2002)	12

Statutes

Fla. Stat. 775.082(9)(a)(1).....	8
----------------------------------	---

Rules

28 U.S.C. § 1257(a).....	7
--------------------------	---

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to
The petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States court of appeals appears at Appendix _____ to
The petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at
Appendix **A** to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Fifteenth Judicial Circuit court
appears at Appendix **B** to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐] No petition for rehearing was timely filed in my case.

☐] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

☐] For cases from **state courts**:

The date on which the highest court decided my case was May 17, 2018.
A copy of that decision appears at Appendix **A**.

☐] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth and Sixth Amendments of the United States Constitution

Florida's Prison Releasee Reoffender Act – Fla. Stat. 775.082(9)(a)(1)

STATEMENT OF THE CASE

Appellant was charged by Information on June 11, 2001, with burglary while Armed with a Firearm (Count 1), Felon in Possession of a Firearm or Ammunition (Count 2), two counts of grand theft (Counts 3 and 4), and Grand Theft (Motor vehicle) (Count 5). The State entered a *nolle prosequere* on Count 2. On July 20, 2001, the State filed a notice of its intent to seek the maximum penalty on Count 1 due to Appellant's qualification as a Prison Releasee Reoffender (PRR). On October 28, 2002, a jury found Appellant guilty. On February 28, 2003, the trial court sentenced Appellant to life in prison on Count 1, and to five (5) years in prison on Counts 3 and 4. The court ordered all sentences to run concurrently, and awarded Appellant 529 days of credit for time served. Appellant appealed and the Fourth District Court of Appeal affirmed the judgment and sentences without a written opinion. *Blevins v. State*, 872 So.2d 911 (Fla. 4th DCA 2004). The district court issued its mandate on May 24, 2004.

Appellant has since filed several post conviction relief actions including the Motion to Correct Illegal Sentence subject of this petition, which was filed September 27, 2017. Appellant asserts in that motion that the trial court erred in sentencing Petitioner as a Prison Releasee Reoffender on Count 1 in that the trial court imposed the PRR sentence in violation of the Sixth Amendment to the Constitution of the United States, because the facts necessary to impose sentence were not found by a jury beyond a reasonable doubt, and the State's intent to seek the sanction was not alleged in the Information. The trial court denied the motion on December 6, 2017. The Fourth District Court of Appeal per curiam affirmed that denial. This Petition for Writ of Certiorari follows.

Petitioner seeks review of the state-court judgment, specifically in the court of first instance and in the subsequent appellate court's denial of Petitioner's Motion to Correct Illegal Sentence where the federal questions sought to be reviewed were raised. The method of raising the federal questions was in Petitioner's postconviction motion asking the trial court to correct an illegal sentence. The trial court denied the motion in an order outlining the reasons therefore and the appellate court per curiam affirmed the order without opinion. Those courts passed on the issue without addressing the federal question presented, in that Florida's Prison Releasee Reoffender Act is unconstitutional as it does not require a jury to determine the facts necessary for imposition of an enhanced sentence only the judge. See Appendix B (trial court order) and Appendix C (Petitioners motion) and Appendix D (initial brief). Petitioner's federal question is timely and properly raised and this Court has jurisdiction to review the judgment on a writ of certiorari.

REASONS FOR GRANTING OF THE WRIT

The State of Florida's Fourth District Court of Appeal has decided an important question of federal law that has not been, but should be, settled by this Court. Specifically, Petitioner argues that The U.S. Supreme Court's decision in *Hurst* requires that all the "critical findings" necessary before the trial court may consider imposing sentence must be found unanimously by the jury. The Florida PRR sentencing scheme violates the Sixth Amendment by committing to the Judge, and not the jury, the fact-finding necessary for mandatory imposition of a statutory maximum sentence. The State courts have passed on addressing this issue.

In the instant case, the jury's guilty verdict authorized a Criminal Punishment Code (CPC) sentence with a floor or lowest permissible sentence (LPS) up to the possibility of life in prison, at the discretion of the judge. The PRR statute took away that discretion and increased the lowest permissible sentence based on fact finding that was outside the jury's verdict. Although that discretion did include the possibility of a life sentence, the PRR statute requires the Court to make a critical finding concerning a defendant's previous incarceration – the date of release from prison. If that critical finding was that the release date was within 3 years of the commission of any of the delineated qualified offenses Defendant was being sentenced for, then the minimum and maximum sentence range becomes life in prison. This effectively increased the statutory maximum sentence. (Appendix D, pp. 5-6).

Because the jury's verdict only authorized a CPC sentence and the PRR statute effectively nullifies the minimum and maximum sentence range allowed by that verdict, the statute does not comport to *Hurst*, *Apprendi* and *Alleyne* and is unconstitutional as applied. The Defendant exercised his right to a jury trial, which placed upon that jury the responsibility of finding all the critical findings necessary for the Court to adjudicate Defendant guilty of the crimes charged and what sentence to impose. In addition to unanimously finding the existence of any aggravating factor, the jury must also unanimously find the aggravating factors are sufficient for the imposition of the mandatory maximum sentence. (Appendix D, pp. 6).

Petitioner has also challenged the *Almendarez-Torres* decision and the narrow exception created in *Apprendi* and *Alleyne* in that the fact of a "prior conviction" is at issue

here. (Appendix D, pp. 12). This Court has the power to revisit and overrule the decision in *Almendarez-Torres*.

See *Almendarez-Torres*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed. 2d 350 (1998).

CONCLUSION

The applicability of *Hurst* and its progeny in *Apprendi* / *Alleyne* to this case is a question of law that is reviewed *de novo*. *United States v. Stone*, 306 F.3d 241, 243 (5th Cir. 2002).

The trial court relied solely on the State courts decision in *Chapa v. State*, 159 So.3d 361, 362 (Fla. 4th DCA 2015) and *Chapa's* reliance on *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000, and *Alleyne v. United States*, 133 S.Ct. 2151; 186 L.Ed. 2d 314 in deciding Appellant's argument is without merit.

The State courts have failed to address Defendant's argument that *Hurst v. State*, 202 So.3d 40 (Fla. 2016), *cert. denied*, 137 S.Ct. 2161, 198 L. Ed. 2d 246 (2017) and *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016) applied the rule of *Apprendi* and held that "the jury not the trial judge" must employ fact-findings to support a sentence.

This Court held that Florida's capital sentencing scheme, which includes the trial judge making "critical findings" necessary to support a sentence of death, is unconstitutional under the Sixth Amendment right to trial by jury because a defendant's death sentence must rest on the jury's not the judge's fact finding.

Likewise here (albeit not a death sentence, the imposition was a mandatory life sentence) the trial court found Defendant to be eligible for a PRR designation, thereby making him ineligible for sentencing under the CPC sentencing guidelines, and sentenced him to life in prison. The trial court's imposition of the life sentence was unconstitutional, because the facts necessary to impose sanctions were not found by a jury beyond a reasonable doubt, as required by the Sixth Amendment to the Constitution of the United States and Florida's counterpart, and because the State did not allege all the necessary elements in the Information, in violation of the Defendant's Fifth and Sixth Amendment federal and state rights.

Petitioner believes in good faith that this case involves principles, in which the settlement of, is of importance to the public as distinguished from the parties and that it affects countless inmates throughout our nation who have received sentences imposed by the judiciary that are unconstitutional, based on this Court's decisions in *Hurst*, *Apprendi* and *Alleyne*, and more specifically Florida inmates under sentences imposed pursuant to Florida's Prison Releasee Reoffender Act.

As this Honorable Court decides whether the instant state court judgment should be reviewed on writ of certiorari, Petitioner asks the Court to take into consideration that the judgment had decided a federal question of substance in a way not in accord with applicable decisions of the United States Supreme Court.