No. 18-6185

In the

Supreme Court of the United States

JASON BECKMAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The Third District Court of Appeal of Florida

BRIEF IN OPPOSITION

ASHLEY BROOKE MOODY
Attorney General of Florida

JONATHAN TANOOS
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
State of Florida
The Capitol – PL-01
Tallahassee, FL 32399-1050
Phone: (850) 414-3681
amit.agarwal@myfloridalegal.com

AMIT AGARWAL
Solicitor General
**Counsel of Record*
EDWARD M. WENGER
Chief Deputy Solicitor General
CHRISTOPHER J. BAUM
Deputy Solicitor General

Counsel for Respondent

QUESTION PRESENTED

A jury convicted Petitioner of first-degree murder, a capital felony punishable by a term of 40 years to life imprisonment without possibility of parole. Petitioner was 17 years old when he committed the offense of conviction. Pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), the trial court held an individualized hearing to determine the appropriate sentence within the statutory range. Before that hearing, Petitioner did not ask the trial court to empanel a sentencing-phase jury. Following the hearing, and after carefully reviewing the aggravating and mitigating factors, the trial court initially sentenced Petitioner to life without possibility of parole.

While his direct appeal was pending, Petitioner filed a motion in the trial court in which he claimed for the first time that the Sixth Amendment gave him a right to have a jury determine the appropriate sentence. The trial court rejected Petitioner's constitutional claim, but it amended its judgment and sentenced Petitioner to a term of life imprisonment with judicial review after 25 years. Florida's intermediate appellate court affirmed Petitioner's conviction and sentence, and the Florida Supreme Court denied discretionary review.

The question presented is: Whether Florida's intermediate appellate court reversibly erred by rejecting Petitioner's claim that the Sixth Amendment gave him a right to have a jury determine the appropriate sentence within the statutory range of 40 years to life imprisonment without possibility of parole.

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INTRODUCTION

The Petition raises a claim regarding the interplay between the constitutional rules announced by this Court in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Specifically, Petitioner contends that § 921.1401, Florida Statutes, which implements the individualized sentencing hearing required by *Miller*, violates *Apprendi*'s requirement that facts increasing the penalty for a crime beyond the statutory maximum must be found by a jury, not a judge. But Florida's sentencing scheme satisfies both *Miller* and *Apprendi*, and the lower courts are not split on this issue. Accordingly, the petition for a writ of certiorari should be denied.

STATEMENT

1. In *Miller*, this Court held that mandatory life without parole for those convicted of felonies committed while under the age of 18 violated the Eighth Amendment's prohibition on cruel and unusual punishments. 567 U.S. at 489. As the Court explained, "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.*

Three Terms ago, in holding that *Miller* announced a new substantive constitutional rule that was retroactive on state collateral review, the Court reiterated what *Miller* requires. As the Court explained, "*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account 'how children are different, and how those differences counsel against irrevocably

sentencing them to a lifetime in prison.'" *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016).

2. In *Apprendi*, this Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt," even if the State characterizes the additional factual findings made by the judge as "sentencing factor[s]." 530 U.S. at 483, 490, 492. For *Apprendi*'s purposes, the statutory maximum "is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings." *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004).

3. Before July 1, 2014, a person (juvenile or adult) convicted of a capital felony in Florida could be sentenced only to death or life imprisonment without the possibility of parole. § 775.082(1), Fla. Stat. (2013). After *Miller* was decided, the Florida Legislature amended Florida's juvenile sentencing scheme to bring it into compliance with *Miller*'s holding. *See* Ch. 2014-220, Laws of Fla.; Fla. Staff Analysis, H.B. 7035 (June 27, 2014) (explaining that the bill was intended to address *Miller*). As relevant, the Legislature enacted Section 921.1401, which provides that upon conviction of certain offenses committed on or after July 1, 2014, the trial court may conduct an individualized sentencing hearing at which it must consider the various factors mentioned by this Court in *Miller*.

The Legislature also provided that a juvenile offender convicted of certain offenses committed on or after July 1, 2014 is "entitled to a review of his or her sentence after 25 years," unless the juvenile had

previously been convicted of a list of enumerated, serious offenses. § 921.1402(a)(2), Fla. Stat.; *see* § 775.082(1)(b)1., Fla. Stat. Offenders entitled to a sentence review hearing are "entitled to be represented by counsel," and the sentencing court "shall consider any factor it deems appropriate" regarding whether to modify the sentence, including a statutory list of factors. §§ 921.1402(5), (6), Fla. Stat.

4. When Petitioner Jason Beckman was seventeen years old, he shot and killed his father with a shotgun while his father was taking a shower in their home. *Beckman v. State*, 230 So. 3d 77, 82 (Fla. 3d DCA 2017), *reh'g denied* (Oct. 19, 2017), *review denied*, No. SC17-2060, 2018 WL 3213795 (Fla. July 2, 2018).

At trial, several of Petitioner's classmates and teachers testified that he told them he hated his father and wanted his father to die. *Id.* at 82-83. His neighborhood friend also testified that two weeks before the shooting, Petitioner had shown her the shotgun and told her that he wanted to shoot his father with it. *Id.* at 83. And a jailhouse informant testified that Petitioner stated that he shot his father because he hated his father. *Id.* at 82, 86. The jury convicted Petitioner of first-degree premeditated murder. *Id.*

Because Petitioner was seventeen at the time he committed the offense, the trial court conducted an individualized sentencing hearing.[1] Before the

[1] By its own terms, Section 921.1401, Florida Statutes, does not apply to crimes committed before July 1, 2014, and Petitioner's crime occurred in 2009. The trial court noted that recent amendments do "*not* apply to crimes committed prior to July 1,

sentencing hearing, Petitioner did not ask the court to empanel a sentencing-phase jury. Nor did he lodge an *Apprendi* objection during the sentencing hearing or before judgment was entered.

Following the hearing, the court imposed a sentence of life in prison without possibility of parole. Pet. App. 13a. After considering the *Miller* factors, the court concluded that Petitioner's crime warranted "the harshest possible penalty" allowed under Florida law. *Id.* at 12a. Indeed, the court found, "[t]here is a very strong possibility that if the Defendant was 1 month older and legally an adult at the time he murdered his father, he could be sentenced to death if the State sought the death penalty." *Id.* At any rate, the court concluded, "[i]f the first degree murder of Jay Beckman does not warrant imposition of a life sentence without the possibility of parole on Jason Beckman, in light of the weak mitigating evidence, then no juvenile can ever be sentenced to life imprisonment without the possibility of parole." *Id.* at 12a-13a.

5. Petitioner appealed to Florida's Third District Court of Appeal. While his appeal was pending, but before filing his initial brief, he filed a motion to correct sentencing errors under Florida Rule of Criminal Procedure 3.800(b)(2) in the trial court, to which jurisdiction was thus temporarily relinquished. In that motion, he argued—for the first time—that the individualized sentencing hearing provided by Section 921.1401 violates *Apprendi* because the trial court, not the jury, conducts the hearing and determines whether

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2014," Pet. App. 3a, but it discussed the factors set out in Section 921.1401 in conducting an individualized hearing pursuant to *Miller*, Pet. App. 5a.

a life sentence is appropriate. He also argued in the alternative that, under Section 921.1402(2)(a), he was entitled to judicial review of his sentence after 25 years. The trial court denied his *Apprendi* claim, but it entered an amended sentencing order sentencing Petitioner to life with judicial review after 25 years. *Beckman*, 230 So. 3d at 94; *see* Pet. 6 n.2.

Petitioner raised several issues on direct appeal, including his claim that Section 921.1401 violates *Apprendi*. The Third DCA rejected that claim. The court first noted that Petitioner had raised what "appears to be an issue of first impression in Florida and [that] there is very little case law from other jurisdictions that directly addresses this question." *Id.* at 95. As a result, the court looked to *People v. Hyatt*, 891 N.W. 2d 549 (Mich. Ct. App. 2016), in which the Michigan Court of Appeals upheld Michigan's juvenile sentencing statute against a similar challenge. Agreeing with the reasoning in *Hyatt*, the Third DCA held that Section 921.1401 does not violate the Sixth Amendment under *Apprendi*. *Beckman*, 230 So. 3d at 97. As the court explained, the Michigan statute examined in *Hyatt*—though not identical—was "sufficiently analogous," as "both authorize a life sentence without parole for a juvenile convicted of premeditated murder; both direct the trial court to conduct an individualized sentencing hearing at which the court is to consider the factors listed in *Miller*; and both direct the court to determine whether to impose a life sentence." *Id.* at 96 n.6. And, as the *Hyatt* court held with respect to the Michigan statute, the Third DCA held that Section 921.1401 "does not violate the Sixth Amendment under *Apprendi* and its progeny." 230 So. 3d at 97.

6. The Florida Supreme Court declined to review the Third District's decision. Pet. App. 53a.

REASONS FOR DENYING THE PETITION

I. THE LOWER COURTS ARE NOT SPLIT ON THE QUESTION PRESENTED.

As Petitioner admits, the small number of courts that have considered the question presented "have taken a position similar to the Third District Court of Appeal of Florida's decision in Petitioner's case." Pet. 16. The courts that have addressed the question agree that allowing judges to conduct the individualized sentencing hearing required by *Miller* comports with *Apprendi*. And although Petitioner contends that "this Sixth Amendment claim is a recurring matter throughout the lower courts," he cites only five decisions—only two of which were decisions from the highest court of a state—none of which conflict. Pet. 16.

Both state courts of last resort to have addressed the issue reached the same conclusion as the Third DCA did below.

· In *People v. Skinner*, the Supreme Court of Michigan affirmed the Michigan Court of Appeals' conclusion in *People v. Hyatt*, 891 N.W.2d 549 (Mich. Ct. App. 2016), that Michigan's similar statute did not violate *Apprendi*. 917 N.W.2d 292, 298-311 (Mich. 2018).

· In *Commonwealth v. Batts*, the Supreme Court of Pennsylvania rejected the argument that "a jury must make the finding regarding a juvenile's eligibility to be sentenced to life without parole." 163 A.3d 410, 478-480 (Pa. 2017).

Petitioner also cites (Pet. 16) three decisions from state intermediate appellate courts, each of which likewise reached the same conclusion as the Third DCA did below.

· In *People v. Blackwell*, a California intermediate appellate court held that *Apprendi* imposed "no constitutional . . . requirement" that the "discretionary consideration of mitigating circumstances so that a sentencer can reach a moral judgment about an individual juvenile's irreparable corruption . . . be accomplished by a jury." 207 Cal. Rptr. 3d 444, 466 (Cal. Ct. App. 2016).

· In *State v. James*, a North Carolina intermediate appellate court rejected a challenge to sentencing guidelines that did "not require the finding of aggravating factors" but only "require the sentencing court to consider the mitigating circumstances of a defendant's youth to determine whether a lesser punishment of life without parole is appropriate." 786 S.E.2d 73, 82 (N.C. Ct. App. 2016).

· And in *State v. Doise*, a Louisiana intermediate appellate court held that the defendant had waived his similar *Apprendi* challenge. 185 So. 3d 335, 345 (La. Ct. App. 2016). The court did, however, note that one of its sister courts had found *Apprendi* to be inapplicable to *Miller* hearings. *See id.* at 345 n.3 (citing *State v. Fletcher*, 149 So. 3d 934 (La. Ct. App. 2016)).

In short, only a handful of other state courts have addressed the question presented, and all of them came to the same conclusion as the court below.

In addition, this is not a case in which "*a state court of last resort* has decided an important federal question

in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals," S. Ct. R. 10(b) (emphasis added); *see* S. SHAPIRO, K. GELLER, T. BISHOP, E. HARTNETT, & D. HIMMELFARB, Supreme Court Practice 180 n.50 (10th ed. 2013) (explaining that this Court "may be less willing to grant certiorari to review a decision from [a] state intermediate appellate court"). The decision below was handed down by one of Florida's intermediate appellate courts. Pet. App. 14a. The Florida Supreme Court then "determined that it should decline to accept jurisdiction," Pet. App. 53a, and that jurisdictional ruling does not operate as an adjudication on the merits. *See, e.g., Harrison v. Hyster Co.*, 515 So. 2d 1279, 1280 (Fla. 1987) (explaining that, where Florida Supreme Court declined to exercise discretionary review, the lower court's decision "was never reviewed on the merits"). Thus, Florida's four other district courts of appeal are not bound by the Third District's ruling; and, even more importantly, nothing prevents the Florida Supreme Court from coming to a different conclusion in a future case. *See id.* That consideration provides an additional reason for denying review. *See Huber v. N.J. Dep't of Envtl. Prot.*, 562 U.S. 1302, 1302 (2011) (statement of Alito, J., joined by Roberts, C.J., and Scalia and Thomas, J.J.) ("[B]ecause this case comes to us on review of a decision by a state intermediate appellate court, I agree that today's denial of certiorari is appropriate.").

Petitioner does not contend that the Florida Supreme Court has repeatedly refused to address the question presented. What is more, the State's court of last resort had good reason not to exercise its power of discretionary review in this case. Petitioner failed to

show that the Florida Supreme Court's review was required to resolve a conflict between the Third District and any other court. In addition, the Florida Supreme Court could reasonably have concluded that the question presented should not be resolved in the context of a case in which the defendant did not ask for the trial court to empanel a sentencing-phase jury *before* the defendant knew what sentence the trial court would choose to impose.

In sum, Petitioner fails to show any disagreement among the lower courts; and still less does he show the kind of conflict important enough to warrant this Court's review.

II. THE DECISION BELOW WAS CORRECT.

This Court's review is not required to correct an error in the decision below. As the Third DCA concluded, Petitioner's sentence does not violate *Apprendi*'s requirement that facts increasing the penalty for a crime beyond the statutory maximum must be found by a jury, not a judge. This Court has expressly and repeatedly explained that a judge may conduct an individualized hearing to comply with *Miller*'s holding that the Eighth Amendment prohibits a sentencing scheme that mandates life without possibility of parole for juvenile homicide offenders; a court's normative determination that a sentence within the allowable statutory range is appropriate does not constitute the kind of factfinding that triggers the rule laid out in *Apprendi* and its progeny; and the trial court at any rate did not impose a penalty greater than the statutory maximum authorized for the crime of which Petitioner was convicted. Instead, the trial court considered a non-exhaustive list of factors to determine

the appropriate sentence *within* the applicable statutory range.

1. In *Miller* and *Montgomery*—both decided well after *Apprendi*—the Court made clear that the required individualized sentencing determinations are to be conducted by the sentencer, regardless of whether that sentencer is a judge or a jury. In *Miller*, the Court stressed that what is required is that "a *judge or jury* must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." 567 U.S. at 489 (emphasis added); *see id.* at 475-76 (discussing requirement that "capital defendants have an opportunity to advance, and *the judge or jury a chance to assess*, any mitigating factors") (emphasis added); *id.* at 485 n.10 (explaining that the Court was "consider[ing] the constitutionality of mandatory sentencing schemes—which by definition remove a judge's or jury's discretion" and discussing "judges and juries" imposing sentences).

In *Montgomery*, the Court again expressly contemplated that a judge could conduct the individualized sentencing hearing: "*Miller* requires that before sentencing a juvenile to life without parole, *the sentencing judge* take into account 'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" 136 S. Ct. at 733 (emphasis added); *see also id.* at 744 (Scalia, J., dissenting) ("Federal and (like it or not) state judges are henceforth to resolve the knotty 'legal' question: whether a 17-year-old who murdered an innocent sheriff's deputy half a century ago was at the time of his trial 'incorrigible.'").

In other words, the Court called for the "sentencer," be it a "judge or [a] jury," to conduct individualized sentencing hearings for juveniles in these cases. *Miller*, 567 U.S. at 480, 489. Thus, Petitioner asks the Court to conclude that, in deciding *Miller* and *Montgomery*, the Court overlooked or misapprehended its own Sixth Amendment jurisprudence. It did not.

Apprendi requires that facts increasing the penalty for a crime beyond the statutory maximum must be found by the jury. This Court's statement that a judge or a jury may conduct the *Miller* hearing complies with that requirement. As this Court has explained, "*Miller* did not impose a formal factfinding requirement." 136 S. Ct. at 735. Thus, a court's decision to make an individualized sentencing determination pursuant to *Miller* does not violate *Apprendi*'s demand for findings of fact by the jury.

The sentence imposed in this case complies with the rule set out in *Apprendi*. Petitioner was convicted of first-degree murder, a capital felony punishable by a term of forty years to life imprisonment without possibility of parole. Pet. App. 45a; *see* § 775.082(1)(b)1., Fla. Stat. (2015); § 782.04(1)(a)1 (2015). The trial court ultimately imposed a sentence of life in prison "with judicial review after twenty five years." Pet. App. 19a. Thus, the sentence the trial court imposed was *within*, not above, the statutory maximum for Petitioner's offense of conviction.

To the extent that the trial court's sentencing determination was guided by Section 921.1401,[2] that statute does not require judges to make any factual findings before imposing a sentence of life with judicial review after twenty-five years. "The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged offense." *Alleyne v. United States*, 570 U.S. 99, 107 (2013); *see Apprendi*, 530 U.S. at 495-96 (referring to the finding required to enhance the maximum sentence in that case as "an essential element of the offense," which in turn constitutes "an independent substantive offense"). Section 921.1401 allows the trial court to "conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence." § 921.1401(1), Fla. Stat. In making that determination, "the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances," including a list of enumerated factors. § 921.1401(2), Fla. Stat. Nothing in the statutory text

[2] Petitioner frames the question presented as "whether section 921.1401, Florida Statutes, violates the Sixth Amendment by allowing a judge rather than a jury to conduct the factfinding necessary to sentence a juvenile to life in prison." Pet. i. By its terms, Section 921.1401 applies to certain offenses "committed on or after July 1, 2014," § 921.1401(1), Florida Statutes, and Petitioner's offense was committed in 2009, Pet. App. 1a. The trial court expressly noted that certain amendments to Florida's juvenile sentencing scheme do "*not* apply to crimes committed prior to July 1, 2014," Pet. App. 3a (citing § 921.1402(1)); but the court looked to those amendments as a source of guidance in determining the appropriate sentence, *id.* at 5a (noting that certain factors "have been incorporated by section 921.1401" and proceeding to "discuss[]" those factors in its order).

requires proof of an additional element of the crime before a court may impose a sentence of life with judicial review after twenty-five years. Instead, state law, like federal law, calls for the court to consider certain factors in determining the appropriate sentence within the applicable sentencing range. *Compare* 18 U.S.C. § 3553(a) (explaining that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2)," which identifies certain relevant sentencing factors, and also "shall consider" other statutorily enumerated sentencing factors).

What is more, in enacting Section 921.1401, the Florida Legislature effectively created a hearing on whether to *mitigate* a juvenile's sentence, rather than to aggravate it. *See* Pet. App. 50a-51a (citing *Hyatt*, 891 N.W. 2d at 569-70; *Blackwell*, 207 Cal. Reptr. at 466). Before Section 921.1401 was passed, a juvenile convicted of first-degree murder could be sentenced *only* to life without parole. § 775.082(1), Fla. Stat. (2013). Under the amended law, the trial court conducts an individualized hearing to determine the "appropriate" sentence after considering mitigating factors and other case-specific evidence. *See* § 921.1401, Fla. Stat. The normative determination that a particular sentence is "appropriate" is not a fact within the meaning of *Apprendi*; and the varied considerations that inform that normative judgment, including mitigating factors that support the imposition of a sentence *below* the applicable statutory maximum, need not be found by a jury. *See Kansas v. Carr*, 136 S. Ct. 633, 642 (2016).

Consistent with that analysis, the Court in *Apprendi* took care to stress that "nothing . . . suggests that it is impermissible for judges to exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing a judgment within the range prescribed by statute." 530 U.S. at 481. To the contrary, the Court has "often noted that judges in this country have long exercised discretion of this nature in imposing sentence within statutory limits in the individual case." *Id.* (citing *Williams v. New York*, 337 U.S. 241, 246 (1949) & *United States v. Tucker*, 404 U.S. 443, 447 (1972)). And here, all that a trial court conducting the hearing required by Section 921.1401 is doing is exercising its discretion to sentence a defendant to life without parole or to some lesser sentence. *Apprendi* does not apply to sentences within the statutory limits. *United States v. Booker*, 543 U.S. 220, 233 (2005) ("[W]hen a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.").

2. Petitioner contends that Section 921.1401 is analogous to California's determinate sentencing law, which this Court struck down in *Cunningham v. California*, 549 U.S. 270 (2007). Yet that statutory scheme, by its own terms, allowed a sentencing court to move from a middle-term sentence to a higher-term sentence "only when the court itself [found] and place[d] on the record facts—whether related to the offense or the offender—beyond the elements of the charged offense." *Id.* at 279. Put another way, the California scheme violated *Apprendi* only because it contained "a clear factfinding directive to which there

is no exception": unless a court made the required findings of fact by a preponderance of the evidence, it could not sentence the defendant to the higher-term sentence. *Id*.

By contrast, Section 921.1401 does not contain "a clear factfinding directive," or indeed any factfinding directive at all. Instead, Section 921.1401 allows the judge to "conduct a separate sentencing hearing to determine" if life without parole "is an appropriate sentence," during which the judge must "consider factors relevant to the offense and the defendant's youth and attendant circumstances." § 921.1401(2). The judge need not make any particular findings on those factors to conclude that life without parole is an appropriate sentence. Nor must the judge make any findings of fact in order to impose a sentence below the statutory maximum of life without parole. Under Sections 775.082(1)(b)1. and 921.1401(1), a judge may sentence a juvenile to life without parole without any additional findings of fact.

Put simply, the role of the individualized sentencing hearing in Florida's scheme is not to obtain the additional findings of fact needed to increase a sentence beyond the statutory maximum, but instead to satisfy *Miller*'s command that sentencers must "have the ability to consider the 'mitigating qualities of youth'" when exercising their discretion to sentence a juvenile defendant within a statutory range. *Miller*, 567 U.S. at 476. Florida's scheme is thus readily distinguishable from California's scheme, which permitted certain sentences to be imposed (and barred other sentences from being imposed) depending on what factual findings were made.

3. For the same reason *Cunningham* is distinguishable, the Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), does not render Section 921.1401 unconstitutional. Under the statutory scheme at issue there, a defendant could not be sentenced to death absent judicial findings of fact. But here, a juvenile defendant can be sentenced to the statutory maximum (life without parole) without making any additional findings of fact, provided that the court considers relevant factors in determining the "appropriate" sentence.

In deciding *Hurst*, the Court relied on its earlier decision regarding Arizona's capital sentencing scheme, *Ring v. Arizona*, 536 U.S. 584 (2002). When *Ring* was decided, under Arizona law, a defendant could not be sentenced to death unless a judge made "further findings"; specifically, after independently finding at least one aggravating circumstance. *Id.* at 592-93. In *Ring*, it was "the required finding of an aggravated circumstance" that "exposed Ring to a greater punishment than authorized by the jury's guilty verdict." *Id.* at 604. "Had Ring's judge not engaged in any factfinding, Ring would have received a life sentence." *Hurst*, 136 S. Ct. at 621. Thus, the judicial factfinding unconstitutionally increased the defendant's sentence beyond the statutory maximum authorized by the jury's verdict standing alone.

As in *Ring*, "the maximum punishment Timothy Hurst could have received without any judge-made findings was life in prison without parole." *Hurst*, 136 S. Ct. at 622. Under Florida's capital sentencing scheme, eligibility for a death sentence turned on the existence of findings of fact made by the judge. *See id.*

(explaining that Florida law allowed a "judge [to] increas[e] [the defendant's] authorized punishment based on her own factfinding"). The Court thus held that Florida's capital sentencing scheme was unconstitutional, as the Sixth Amendment "required Florida to base [the defendant's] death sentence on a jury's verdict, not a judge's factfinding." *Id.* at 624.

Unlike in *Ring* and *Hurst*, however, under Section 921.1401, a judge need not make any findings of fact to sentence a juvenile to life without parole. A judge need only conduct an individualized sentencing hearing at which she must "consider factors" in exercising her discretion to determine whether life without parole, or some lesser sentence, is "appropriate." § 921.1401(2). Thus, the maximum punishment that a jury's guilty verdict authorizes for a juvenile defendant, without any judge-made factual findings, is life without parole. *See Hurst*, 136 S. Ct. at 622. All that the *Miller* hearing does is provide an opportunity for the offender to present mitigating circumstances in an effort to obtain a sentence *lower than* the statutory maximum.

Although Petitioner points to the list of factors that a judge must consider at the individualized sentencing hearing, Section 921.1401 does not require that the judge make any factual finding on those factors. For example, although "[t]he juvenile either is or is not amenable to rehabilitation," and although "[i]mmaturity either did or did not have an impact on the juvenile's decision[-]making" (Pet. 11), nothing requires the judge to find that the juvenile is not amenable to rehabilitation or that immaturity had an impact on his decision-making before imposing a sentence of life without parole. The judge is not

required to find that *any* of the listed factors weighs in favor of life without parole, and the list is not comprehensive or exclusive. *See* § 921.1401(2). In *Hurst*, by contrast, the law at issue required the judge to find the existence of at least one statutorily enumerated aggravating circumstance before the defendant could be sentenced to death. 136 S. Ct. at 624. Thus, Section 921.1401's directive that a trial court consider certain factors in exercising its sentencing discretion does not create a fact-finding requirement for purposes of applicable Sixth Amendment jurisprudence. *See Montgomery*, 136 S. Ct. at 735 ("*Miller* did not impose a formal factfinding requirement."); *compare* 18 U.S.C. § 3553(a). As a result, *Hurst*—like *Cunningham*—is inapposite.

* * *

In sum, *Apprendi* says nothing about who must conduct *Miller*'s individualized sentencing hearing and consider the *Miller* factors; and this Court has expressly and repeatedly explained that a judge may conduct that hearing and consider those factors. This Court did not misapprehend its own Sixth Amendment jurisprudence when it made those pronouncements. *Apprendi* and its progeny do not bar a sentencing court from considering pertinent sentencing factors to determine the appropriate sentence within the applicable statutory range, and that is what the trial court did here. In light of the absence of a conflict in the lower courts on this issue, this Court's review of the Third DCA's straightforward application of the Court's precedents is unnecessary and unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ASHLEY BROOKE MOODY
Attorney General of Florida

JONATHAN TANOOS
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
State of Florida
The Capitol – PL-01
Tallahassee, FL 32399-1050
Phone: (850) 414-3681
amit.agarwal@myfloridalegal.com

AMIT AGARWAL
Solicitor General
Counsel of Record
EDWARD M. WENGER
Chief Deputy Solicitor General
CHRISTOPHER J. BAUM
Deputy Solicitor General

Counsel for Respondent

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