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

REPLY BRIEF FOR PETITIONER

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JANUARY 28, 2019

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I. Because Petitioner's case raises an important question of federal law that calls into doubt the constitutionality of juvenile sentencing in Florida and beyond, this Court should review the decision of the Florida district court just as it did in *Graham v. Florida*, 560 U.S. 48 (2010).

If certiorari is granted in this case, it would not be the first time this Court has reviewed a juvenile sentencing decision from a Florida intermediate appellate court in the absence of conflict. In *Graham v. State*, 982 So. 2d 43 (Fla. 1st DCA 2008), the First District Court of Appeal of Florida held that sentencing a juvenile non-homicide offender to life in prison without parole was constitutional, and the Florida Supreme Court declined to review the case. *See Graham v. State*, 990 So. 2d 1058 (Fla. 2008) (table). Even though *Graham* did not arise from a state court of last resort and did not conflict with any other case, this Court granted review and quashed the decision of the intermediate appellate court. *Graham v. Florida*, 560 U.S. 48 (2010).

As the procedural history of *Graham* shows, whether 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" is not the only basis for this Court to exercise its discretion to review a state case. *See* S. Ct. R. 10(b). A grant of certiorari is also appropriate where any "state court … has decided an important question of federal law that has not been, but should be, settled by this Court …" *See* S. Ct. R. 10(c). The State tellingly does not even attempt to argue that the question of federal law posed by this case is unimportant. *See* BIO 6-9. Nor could it. Because children are "constitutionally different from adults for purposes of sentencing," *Miller v. Alabama*, 567 U.S. 460, 471 (2012), ensuring the

constitutionality of the procedures used to sentence them to life in prison is of paramount importance and warrants this Court's review.[1]

The State notes that "Florida's four other district courts of appeal are not bound by the Third District's ruling," and observes that "nothing prevents the Florida Supreme Court from coming to a different conclusion in a future case." BIO 8. But subsequent to the decision in Petitioner's case, other Florida district courts rejected identical Sixth Amendment challenges to section 921.1401, Florida Statutes, relying on the Third District's decision in *Beckman*. *See Copeland v. State*, 240 So. 3d 58, 59–60 (Fla. 1st DCA 2018) ("Mr. Copeland argues that … his rights to a jury trial were violated at resentencing because the trial court considered the § 921.1401(2) sentencing factors, instead of a jury … We disagree with his argument for the reasons set forth in *Beckman v. State*, 230 So. 3d 77, 94–97 (Fla. 3d DCA 2017)."); *Arce v. State*, 251 So. 3d 350 (Fla. 5th DCA 2018) (affirming in an unelaborated per curiam opinion on the authority of *Beckman* and *Copeland*).

The fact that the other district courts of Florida have so far adopted the Third District's rationale significantly reduces the chances of the Florida Supreme Court reviewing this issue. The five district courts of appeal in Florida "were never intended to be intermediate courts." *Johns v. Wainwright*, 253 So. 2d 873, 874 (Fla. 1971). Instead, "it was the intention of the framers of the constitutional amendment which

[1] Although the State emphasizes that Petitioner raised his *Apprendi* claim after sentencing, such a claim can be properly raised in Florida for the first time on appeal via a motion to correct sentencing errors. *See, e.g., Arrowood v. State*, 843 So. 2d 940, 941 (Fla. 1st DCA 2003) ("[The defendant] properly filed a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) to raise his *Apprendi* claim.").

created the District Courts that the decision of those courts would, in most cases, be final and absolute." *Id.*; *Karlin v. City of Miami Beach*, 113 So. 2d 551 (Fla. 1959) ("We have repeatedly described the Courts of Appeal as being in substantial measure final appellate courts of last resort …"). Because the district courts are comparable to courts of last resort, the Florida Supreme Court "has no jurisdiction to simply and routinely review the district court decisions" in the absence of "conflict with another district court decision." *State v. Barnum*, 921 So. 2d 513, 523 (Fla. 2005).

The Florida Supreme Court is unlikely to review this issue unless one of the remaining district courts finds that section 921.1401 violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Without inter-district conflict, Florida trial courts will continue to sentence juveniles based solely on statutorily-mandated judicial factfinding. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). In the same way that this Court's intervention was necessary in *Graham* to prevent juveniles from receiving disproportionate punishment, its intervention is necessary here to prevent juveniles facing life in prison from being deprived of their Sixth Amendment rights.

II. A life sentence in this case was not authorized by the jury's verdict alone, but rather required factfinding on the section 921.1401 factors.

On the merits, the State argues that no Sixth Amendment violation occurred in this case because "*Miller* did not impose a formal factfinding requirement" at sentencing. BIO 10–11 (quoting *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016)). The *Apprendi* violation in this case is not the result of this Court's decision in *Miller*, but instead results from the statute enacted by Florida in response to *Miller*.

Miller imposed only one limitation on the states: they cannot automatically sentence juveniles convicted of homicide to life in prison without parole. Because crafting statutes is a task for legislators, not judges, *Miller* did not dictate a nationwide solution to remedy this Eighth Amendment violation. How to bring their penal laws into compliance with *Miller* was a question for the states to resolve, *Montgomery*, 136 S.Ct. at 735, and one that could be answered without requiring any factfinding at sentencing. *See id.* at 736 ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole …"). Because Florida chose to remedy its *Miller* problem through a statute that mandates factfinding at sentencing as a prerequisite to a juvenile life sentence, Petitioner's case raises a Sixth Amendment claim unaddressed by *Miller* and *Montgomery*.

The State next claims that section 921.1401 did not require the court "to make any factual findings before imposing a sentence of life" on Petitioner. BIO 12, 17. But the statute mandates that a court "*shall* consider factors relevant to the offense and the defendant's youth and attendant circumstances" when sentencing a juvenile convicted of an offense punishable by life. Fla. Stat. § 921.1401(1) (emphasis added). The applicable rule of procedure in turn requires the trial court to "make *specific findings* on the record that all relevant factors have been reviewed and considered by the court prior to imposing a sentence of life imprisonment or a term of years equal to life imprisonment." Fla. R. Crim. P. 3.781(c)(1) (emphasis added). Although the section 921.1401 factors are non-exhaustive, a court cannot impose a life sentence without first considering the enumerated factors. Fla. Stat. § 775.082(1)(b)1.

As far as the Sixth Amendment is concerned, that's the ballgame. Where specific factfinding *must* be performed before a certain sentence can be imposed, a legislature cannot relegate that task to the judge rather than jury by labeling the facts "sentencing factors" rather than "elements." *See Blakely v. Washington*, 542 U.S. 296, 306–07 (2004). Although the State notes that section 921.1401 does not require the trial court to make any "particular" finding before imposing a life without parole sentence, BIO 15, this is irrelevant. "Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact" or "any aggravating fact," it remains the case "that the jury's verdict alone does not authorize the sentence." *Id.* at 305. Such a sentencing procedure runs contrary to the "well-established practice" at the time of the Founding of submitting to the jury "every fact that was a basis for imposing … punishment." *Alleyne v. United States*, 570 U.S. 99, 109 (2013).

The objective nature of the section 921.1401 factors underscores that the statute requires the judge to make concrete findings of fact. Assessing a juvenile's "intellectual capacity, and mental and emotional health at the time of the offense," or the "extent of the defendant's participation in the offense," is not "a judgment call" but rather a "purely factual determination." *Kansas v. Carr*, 136 S.Ct. 633, 642 (2016). Moreover, these factors will often be in dispute. When examining the "extent of the defendant's participation in the offense," there will be cases where the State argues the juvenile was a crime's mastermind, while the defense maintains he was a minor participant. There will be cases where the defense argues that a crime was the result of mental illness, while the State maintains that the juvenile had a personality

disorder. Complying with the statutory mandate to consider these factors as a prerequisite to a life sentence requires the judge to resolve these factual disputes.

Petitioner's case exemplifies the contested nature of these sentencing factors. The parties disagreed at sentencing as to whether Petitioner's autism contributed to the offense, and the judge found that it did not.[2] Pet. App. 8a, 10a–11a. Because the outcome of factfinding often turns on "the identity of the factfinder," *Apprendi*, 530 U.S. at 475, the Constitution demands that evidentiary disputes required to impose a specific sentence must be resolved by a jury rather than judge.

Unsurprisingly, Florida courts reviewing sentences imposed pursuant to section 921.1401 recognize that it requires judges to engage in factfinding. *See Hernandez v. State*, ___ So. 3d ___, 43 Fla. L. Weekly D1079 (Fla. 3d DCA 2018) ("The trial court's findings of fact on the statutory factors listed in section 921.1401 are reviewed for the existence of competent, substantial evidence in the record."); *Hadley v. State*, 190 So. 3d 217, 218 (Fla. 4th DCA 2016) ("[T]he trial court's findings on aggravating or mitigating factors [following a section 921.1401 sentencing hearing] are reviewed for competent substantial evidence."). The judge in Petitioner's case likewise had no doubt that section 921.1401 required factfinding. The court made findings on the statutory factors, gave weight to them, and sentenced Petitioner to life in prison only after concluding that "the aggravating circumstances clearly and

[2] Another disputed issue was the significance of Petitioner's youth at the time of the offense. The court claimed in its original sentencing order that Petitioner was "29 days shy of his 18th birthday," and gave "no weight" to his age. Pet. App. 7a, 9a. In actuality, Petitioner had turned seventeen one month before the offense.

convincingly outweigh the mitigating factors." Pet. App. 7a-12a. The State's claim that this statute imposes no factfinding requirement cannot withstand scrutiny.[3]

The State also argues that section 921.1401 is a mitigation statute designed to "provide an opportunity for the [juvenile] to present mitigating circumstances in an effort to obtain a sentence" less than life. BIO 13, 17. Respondent is mistaken. This sentencing hearing is not a one-sided affair where the defense presents mitigation to rebut a presumptively appropriate sentence. It is instead an adversarial hearing where both "the state and defendant" present evidence "relevant to the offense, the defendant's youth, and attendant circumstances, including, but not limited to those enumerated in section 921.1401(2), Florida Statutes." Fla. R. Crim. P. 3.781(b).

Furthermore, whether a particular sentencing factor is aggravating or mitigating depends on the facts of the case. To illustrate, the "extent of the defendant's participation in the offense" can be mitigating where the juvenile was a minor participant coerced by peer pressure, and an aggravating factor where he or she acted alone pursuant to a premeditated plan. Consideration of these aggravating and mitigating factors requires the court to ascribe weight to them, which is precisely what the judge did here. Pet. App. 5a–11a. Calling section 921.1401 a mitigation

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[3] The State's suggestion that section 921.1401 does not apply to Petitioner's case is equally meritless. BIO 12 n.2. Although the date of Petitioner's offense precedes the statute's enactment, chapter 2014-220, Laws of Florida, applies retroactively. *See Horsley v. State*, 160 So. 3d 393, 394–95 (Fla. 2015). The trial court considered the 921.1401 factors in sentencing Petitioner, and later amended his sentence to include judicial sentence review after twenty-five years as required by sections 775.082(1)(b)1. and 921.1402, Florida Statutes. The Third District Court of Appeal of Florida expressly addressed Petitioner's Sixth Amendment challenge to the statute as applied to his case. The constitutionality of section 921.1401 is ripe for review.

statute is akin to calling Florida's capital sentencing procedure a mitigation statute. *See Hurst v. Florida*, 136 S.Ct. 616, 621 (2016).

The State finally asserts that section 921.1401 merely calls for the judge to select the appropriate sentence within a predefined range. BIO 14. There is no doubt that a sentencing court can in its discretion consider "various factors relating both to offense and offender" when imposing any sentence "within the range prescribed by statute." *Apprendi*, 530 U.S. at 481 (emphasis omitted). The statutory maximum for *Apprendi* purposes, however, "is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings." *Blakely*, 542 U.S. at 303.

As shown above, it is impossible for a court to sentence a juvenile to life without making factual findings on the section 921.1401 factors. Since a judge's findings on the aggravating and mitigating factors in section 921.1401 are mandatory and subject to review, *Hadley*, 190 So. 3d at 218, the failure to make these findings precludes a life sentence. *Id.*; Fla. Stat. § 775.082(1)(b)1.; Fla. R. Crim. P. 3.781(c)(1). In other words, "[h]ad [Petitioner's] judge not engaged in any factfinding, [he] would [not] have received a life sentence." *See Hurst*, 136 S.Ct. 616 at 621 (citing *Ring v. Arizona*, 536 U.S. 584, 597 (2002)). Because the Sixth Amendment does not tolerate such a sentencing scheme, this Court should grant certiorari.

CONCLUSION

The Sixth Amendment requires the State to prove to a jury all of the facts legally necessary to support a defendant's term of incarceration. This demand recognizes that judges are not wiser than the people, and gives life to the jury's function as a bulwark between the accuser and the accused. Preserving the "historic role of the jury as an intermediary between the State and criminal defendants" requires granting certiorari and ending Florida's practice of sentencing juveniles to life in prison based solely on judicial factfinding. *See Alleyne*, 570 U.S. at 114.

Respectfully submitted,

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