

CAPITAL CASE

DOCKET NO. 18-6902

IN THE SUPREME COURT OF THE UNITED STATES

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SCOTT MANSFIELD,

*Petitioner,*

vs.

STATE OF FLORIDA,

*Respondent.*

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

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REPLY TO BRIEF IN OPPOSITION

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**CAPITAL CASE**

**QUESTION PRESENTED**

The State's reformulation of the question presented avoids the important issues that are properly before this Court. There was no independent and adequate state ground that supports the Florida Supreme Court denial of relief.

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REPLY TO BRIEF IN OPPOSITION

**THE STATE'S BRIEF IN OPPOSITION DOES NOT OVERCOME MR. MANSFIELD'S ARGUMENTS FOR GRANTING CERTIORARI.**

The State argued that "that there is no compelling reason for this Court to review the state-law based decision that *Hurst v. Florida*, 136 S. Ct. 616 (2016) is not retroactively applicable to" Mr. Mansfield. BIO at 12. The grounds in Mr. Mansfield's petition are properly before this Court. As he argued in his petition, Mr. Mansfield was convicted and sentenced to death with confused proceedings that denied Mr. Mansfield his constitutional rights and a fair and reliable determination of his guilt and of the applicability of his death sentence. This Court's decision in *Hurst v. Florida*, brought to light the unconstitutionality of Mr. Mansfield's conviction and death sentence because Mr. Mansfield was denied a jury on the facts that subjected him not only to the death penalty, like Mr. Hurst, but also his murder conviction. Mr. Mansfield had the same right to jury findings of fact for his conviction as he had for those facts that subjected him to the death penalty.

The denial of Mr. Mansfield's rights as detailed in his petition was a violation of his rights under the United States Constitution and thus not a state law decision. Moreover, a systematic denial in multiple cases of these rights by the Florida courts surely is a compelling reason for this Court to grant

certiorari. The State argued a number of points in its Brief in Opposition. These points are countered as follows:

**1. Mr. Mansfield's rights and the availability of relief do not depend on retroactivity because Hurst's jury trial requirement also mandated that the State prove each element beyond a reasonable doubt.**

The State attempts to hide the unconstitutionality of Mr. Mansfield's conviction and death sentence behind a wall of non-retroactivity. In Mr. Mansfield's case, either retroactive application is not necessary, or based on the United States Constitution it is required.

In *Mullaney v. Wilbur*, 421 U.S. 684 (1975), this Court held that the Due Process Clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion or sudden provocation when the issue is properly presented in a homicide case. *Id.* at 704. Thus, under the Due Process Clause, it is the state, and the state alone, which must prove each element beyond a reasonable doubt and has the burden of persuasion. Again, this right was so fundamental that this Court found no issue with retroactive application in *Hankerson v. N. Carolina*, 432 U.S. 233, 240-41 (1977).

Moreover, retroactivity is not at issue in this petition because the Florida Supreme Court's *Ring-split*<sup>1</sup> violates equal protection and constitutionally cannot be used to deny Mr.

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<sup>1</sup>*Ring v. Arizona*, 536 U.S. 584 (2002)

Mansfield relief because it renders his death sentence arbitrary and capricious.

The State is free to allow greater retroactivity than that which is required by the United States Constitution, but not less. See *Welch v. United States*, 136 S. Ct. 1257, 1264 (2016). ("The normal framework for determining whether a new rule applies to cases on collateral review stems from the plurality opinion in *Teague v. Lane*, 489 U.S. 288 (1989)."). The state is not free to apply its own retroactivity law in a manner that renders the remaining convictions and death sentences unconstitutional.

A state is also not free to deny retroactive application of a new law that should be found retroactive under the federal standard of retroactivity. In *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016), the state courts denied relief under *Miller v. Alabama*, 567 U.S. 460 (2012), based on a finding of non-retroactivity under state law. *Montgomery*, 136 S. Ct at 727. On certiorari review, this Court considered whether *Miller* adopted a new substantive rule that applies retroactively on collateral review and whether the state court could refuse to give retroactive effect to *Miller*. *Id.* This Court reversed the state denial based on retroactivity grounds because:

Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open

to a claim controlled by federal law, the state court "has a duty to grant the relief that federal law requires." *Yates*, 484 U.S., at 218, 108 S. Ct. 534. Where 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. Accordingly, based on *Montgomery*, a state court may not constitutionally refuse to give retroactive effect to a substantive constitutional right. While *Danforth v. Minnesota*, 552 U.S. 264 (2008), allows a state court to extend more retroactivity than federal constitutional law requires, a state may not refuse to apply new law retroactively when the new law meets the requirements for retroactive application.

The State "cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge." *Montgomery*, 136 S. Ct at 731-32. In Mr. Mansfield's case, giving retroactive effect to the post-*Ring* cases but not to the pre-*Ring* cases, based on no other distinction than the calendar, violates equal protection and is arbitrary and capricious.

**2. Mr. Mansfield could not fully raise the claims he did until after *Hurst*.**

Mr. Mansfield could only receive relief on the claims he raised after this Court issued *Hurst* because the Florida Supreme Court ignored this Court's decision in *Ring v. Arizona*. For years Mr. Mansfield has challenged the lack of a specific jury verdict

and adequate notice. This Court's decision in *Hurst* showed that Mr. Mansfield was denied the fundamental rights he raised in his petition. It cannot be overlooked that despite Mr. Mansfield's raising these issues, it took this Court's decision in *Hurst* to force the Florida Supreme Court to respect the right to a jury trial for the penalty phase. It will take another opinion from this Court for the Florida Supreme Court to decide a jury trial on the specific prosecution theory is necessary as well.

**3. There was no independent and adequate state ground that led to the denial - - only the Florida Supreme Court again failing to enforce the right to a jury trial and proof beyond a reasonable doubt as they did for years after *Ring*.**

The independent and adequate state ground theory does not prevent review of state court decisions that conflict with the United States Constitution. In the instant case it was the so-called state court decision finding that the Eighth and Fourteenth Amendments were not violated that was the basis for denying Mr. Mansfield a remedy.

The State misuses the independent and adequate (and regularly applied) state ground theory. This Court stated in *Johnson v. Mississippi*, 486 U.S. 578 (1988):

"[W]e have consistently held that the question of when and how defaults in compliance with state procedural rules can preclude our consideration of a federal question is itself a federal question." *Henry v. Mississippi*, 379 U.S. 443, 447 [85 S. Ct. 564, 567, 13 L.Ed.2d 408] (1965). "[A] state procedural ground is not 'adequate' unless the procedural rule is 'strictly or regularly followed.'" *Barr v. City of Columbia*, 378 U.S.

146, 149 [84 S. Ct. 1734, 1736, 12 L.Ed.2d 766] (1964)."  
*Hathorn v. Lovorn*, 457 U.S. 255, 262-263, 102 S. Ct.  
2421, 2426-2427, 72 L.Ed.2d 824 (1982); see *Henry v.*  
*Mississippi*, 379 U.S., at 447-448, 85 S. Ct., at 567-  
568. We find no evidence that the procedural bar relied  
on by the Mississippi Supreme Court here has been  
consistently or regularly applied.

*Id.* at 587.

The denial in Mr. Mansfield's case was not based on an independent and adequate state ground, regularly applied. The Florida Supreme Court did not deny relief because of a procedural bar only. The court found that: "Because *Hurst v. Florida*, as interpreted by this Court in *Hurst*, does not apply retroactively to Mansfield's case, it does not open the door to otherwise untimely claims under Florida Rule of Criminal Procedure 3.851(d)(2)(B)." *Mansfield v. State*, 248 So. 3d 59, 60 (Fla. 2018). Because the Florida Supreme Court did not apply a non-retroactivity bar to the post-*Ring* cases, this would not be a "regularly applied" independent and adequate state ground. Moreover, considering that the court fabricated partial retroactivity from whole cloth in this case, it was even clearer that the State's reliance on the doctrine is misplaced. Ultimately, the denial in Mr. Mansfield's case was based on the Florida Supreme Court's unwillingness to apply its retroactivity decision in a manner that was not arbitrary and capricious and did not violate equal protection.

Most importantly, there is a distinction between the state basing some ruling on the state's procedural rules and the state's

case law just disagreeing with the federal case law. All state court rulings that claim a state-law basis are not immune from this Court's federal constitutional review. A state court ruling is "independent" only when it has a state-law basis for the denial of a federal constitutional claim that is separate from "the merits of the federal claim." *Foster v. Chatman*, 136 S. Ct. 1737, 1759 (2016); see also *Florida v. Powell*, 559 U.S. 50, 56-59 (2010); *Michigan v. Long*, 463 U.S. 1032, 1037-44 (1983). There are multiple federal questions presented in this petition, including whether the Florida Supreme Court's *Ring*-based retroactivity cutoff for *Hurst* claims when applied to Mr. Mansfield's right to a jury trial and notice, violates the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. The Florida Supreme Court's application of its state-law *Ring*-based cutoff to Mr. Mansfield cannot be "independent" from Mr. Mansfield's federal Fifth, Sixth, Eighth and Fourteenth Amendment claims. The state court's ruling is inseparable from the merits of the federal constitutional arguments Mr. Mansfield has raised throughout this litigation. See *Foster*, 136 S. Ct. at 1759.

Under the State's interpretation of the independent and adequate state ground theory, this Court could not have granted certiorari in *Hurst* itself, given the Florida Supreme Court's upholding of Florida's prior capital sentencing scheme as a matter of state law. According to State's logic, so long as any state

retroactivity scheme is articulated as a matter of state law, this Court is powerless to consider cutoffs drawn at any arbitrary point in time, or even state rules providing retroactivity to defendants of certain races or religions but not others.

Contrary to the State's response, this Court has offered a simple test to determine whether a state ruling rests on independent and adequate state grounds: would this Court's decision on the federal constitutional issue be an advisory opinion, i.e., would the result be that "the same judgment would be rendered by the state court after [this Court] corrected its views of federal laws"? *Ake v. Oklahoma*, 470 U.S. 68, 74-75 (1985). For Mr. Mansfield's issues, the answer is "no." If this Court were to hold that the *Ring*-based cutoff violated the Constitution, the Florida Supreme Court surely could not re-impose its prior judgment denying relief based on the *Ring* cutoff.

Lastly, while Mr. Mansfield's petition involves guilt phase claims, he had the same right to raise those claims as any other litigant. There was no material difference in the procedural posture of the post-*Ring* cases that led to relief and the pre-*Ring* cases. While some of the post-*Ring* claims were not final, there were many post-*Ring* cases that were final in state and federal cases that received relief. Mr. Mansfield had the same right to raise *Hurst* and *Hurst* related claims as those who were able to prevail. The fact that he did not prevail is properly before this

Court.

**4. The Jury Instructions in Mr. Mansfield's case did violate *Caldwell v. Mississippi* when considered in light of *Hurst v. Florida* and *Hurst v. State*.**

Florida's capital sentencing structure does violate *Caldwell v. Mississippi*, 472 U.S. 320 (1985), because the jury instructions to the advisory panel, diminished the advisory panel's role, even though they were not sitting as a jury. *Hurst* brought to light that Florida was denying individuals the right to a jury trial. The *Caldwell* issue Mr. Mansfield raised does not create any additional retroactivity problems; it can stand alone or be considered for the point that the Florida Supreme Court left behind the death sentences of those who were even further removed from a constitutional death sentence. Mr. Mansfield's case was not the most aggravated and least mitigated, then or now, when compared those who will receive death.

**CONCLUSION**

Certiorari should be granted.

Respectfully submitted,

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