DOCKET NO. 18-6956

IN THE SUPREME COURT OF THE UNITED STATES

JASON DIRK WALTON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

[Capital Case]

Jason Dirk Walton masterminded a botched home invasion robbery during which three people were shot and killed execution-style after one of them recognized Walton. The eight-year-old son of one of the victims, who was tied up and locked in the bathroom, overheard the horrific events unfold. The child called 911 and reported his father's murder. Walton's conviction and death sentence became final in 1990.

Walton sought postconviction relief after this Court determined in Hurst v. Florida, 136 S. Ct. 616 (2016) that Florida's capital sentencing procedure was infirm. On remand from Hurst, the Florida Supreme Court made substantial procedural changes, but concluded that state retroactivity jurisprudence required that the changes apply only to those capital defendants whose cases were not final when Ring v. Arizona, 536 U.S. 584 (2002) was rendered. Because Walton's case was final in 1990, his bid for relief failed as a matter of state law. Walton's request for certiorari review of the Florida Supreme Court's rejection of his claim gives rise to the following questions:

> Whether the Florida Supreme Court's decision to limit retroactive application of Florida's recently amended capital sentencing procedure, a determination that was

based on the Court's interpretation of Florida law, complies with the Eighth and Fourteenth Amendments,

and

Whether the Florida Supreme Court's denial of Walton's postconviction claim alleging newly discovered evidence violated the United States Constitution where the decision was based on matters of pure state law.

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PARTIES TO THE PROCEEDINGS

The following were parties in the proceedings below:

1) Jason Dirk Walton, Petitioner in this Court, was the appellant below.

2) The State of Florida, Respondent in this Court, was the appellee below.

CITATION TO OPINION BELOW

The published opinion of the Florida Supreme Court is reported at Walton v. State, 246 So. 3d 246 (Fla. 2018).

STATEMENT OF JURISDICTION

The judgment of the Florida Supreme Court was entered on May 17, 2018, and Petitioner's motion for rehearing was denied on July 5, 2018. (Pet. Attachment A). Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction, but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

STATEMENT OF THE CASE

Petitioner, Jason Dirk Walton, was convicted of first-degree murder for killing three people during the course of a home invasion robbery and burglary. In 2015, he filed a postconviction claim alleging discovery of new evidence after one of Walton's co-defendants, who was previously facing death, was resentenced to life. While Walton's motion was pending, this Court issued Hurst v. Florida, 136 S. Ct. 616 (2016). Within a few months, the Florida Supreme Court rendered Hurst v. State, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017), after which the state legislature revised Florida's capital sentencing statute pursuant to the high court's directives. Perry v. State, 210 So. 3d 630 (Fla. 2016), F.S. 921.141 (2017). Walton filed an amended postconviction motion alleging entitlement to relief pursuant to both Hurst decisions as well as the new sentencing statute. Denial of Walton's motion was affirmed on review. The following facts are drawn from the Florida Supreme Court's opinion affirming Walton's postconviction appeal:

> Walton also raises several Hurst[1] claims, which we reject. This Court has held that Hurst does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in Ring.[2] In Hitchcock,[3] this Court

[1] Hurst v. Florida, 136 S. Ct. 616 (2016).

[2] Ring v. Arizona, 122 S. Ct. 2428 (2002).

affirmed its decision in Asay V,[4] denying the retroactive application of Hurst v. Florida, as interpreted in Hurst,[5] to defendants whose death sentences were final when the United States Supreme Court decided Ring. Walton is among those defendants whose death sentences became final before Ring.

This Court has previously rejected Eighth Amendment Hurst claims. Walton disagrees with the retroactivity cutoff that this Court set in Asay V; however, that decision is final.

Walton's Habeas Claim

Walton's petition sought relief pursuant to the Supreme Court's decision in Hurst v. Florida, and our decision on remand in Hurst. This Court stayed Walton's appeal pending the disposition of Hitchcock. After this Court decided Hitchcock, Walton responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case. After reviewing Walton's response to the order to show cause, as well as the State's arguments in reply, we conclude that Walton is not entitled to relief. Walton's death sentences became final in 1990. Thus Hurst does not apply retroactively to Walton's sentences of death. Accordingly, we deny Walton's petition for habeas relief.

Walton v. State, 246 So. 3d 252-253 (Fla. 2018) (internal citations removed).

Walton now seeks certiorari review of the Florida Supreme Court's decision.

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[3] Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017).

[4] Asay v. State, 210 So. 3d 1 (Fla. 2016), cert.denied, 138 S. Ct. 41 (2017).

[5] Hurst v. State, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017).

REASONS FOR DENYING THE WRIT

Shortly after this Court issued Hurst v. Florida, the Florida Supreme Court and the state legislature made significant changes to Florida's sentencing procedures in capital cases. In addition to addressing the shortcomings identified by this Court in Hurst, Florida's high court also required that all new death sentences be supported by a unanimous jury's sentencing recommendation. Not surprisingly, a large number of already death-sentenced inmates sought relief and raised every conceivable argument in an effort to persuade the court to grant new sentencing trials. The Florida Supreme Court ultimately determined that relief would be given only to those defendants whose cases were final *after* this Court's decision in Ring v. Arizona was rendered in 2002. Walton's postconviction challenge was rejected because his case was final in 1990.

Walton advances two claims in support of his quest for certiorari review. First, he contends that the Florida Supreme Court's decision to limit retroactivity based on whether an inmate's case was final before or after a certain date is arbitrary and violates the Eighth and Fourteenth Amendments. Second, he contends that the lower court's alleged failure to consider his arguments regarding retroactivity amounts to an arbitrary or capricious application of the law in violation of

the Eighth Amendment. Florida's retroactivity determination was based on an application of Florida Supreme Court precedent, and as will be seen, the state court addressed all of Walton's claims; accordingly, there is no reason for this Court to consider granting review.

Certiorari is inappropriate here because the Florida Supreme Court's rulings are wholly consistent with the United States Constitution. Walton fails to identify any compelling reason for this Court to review his case. U.S. Sup. Ct. R. 10. Indeed, Walton cites no decision from this or any appellate court that conflicts with the Florida Supreme Court's decision in Walton v. State, 246 So. 3d 246 (Fla. 2018). Nothing presented in Walton's petition justifies the exercise of this Court's certiorari jurisdiction.

I. THE FLORIDA SUPREME COURT'S RULING ON RETROACTIVITY DOES NOT VIOLATE EQUAL PROTECTION OR THE EIGHTH AMENDMENT.

The Florida Supreme Court's decision in Hurst v. State followed this Court's ruling in Hurst v. Florida by requiring that statutory aggravators be found by a jury beyond a reasonable doubt before a death sentence may be imposed. The Florida high court has also mandated several other changes not mentioned in Hurst v. Florida. Florida now requires 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." Hurst v. State, 202 So. 3d at 57.

In Asay v. State, 210 So. 3d 1, 22 (Fla. 2016), cert. denied, 138 S. Ct. 41 (2017), the Florida Supreme Court ruled that, as a matter of state law, Hurst v. State is not retroactive to any case in which the death sentence was final prior to the June 24, 2002 decision in Ring v. Arizona, 536 U.S. 584 (2002). Florida's decision to grant limited retroactive application of Hurst v. State is not constitutionally unsound and does not otherwise present a matter that merits the exercise of this Court's certiorari jurisdiction.

This Court has held that, in general, a state court's retroactivity determinations are a matter of state law, not federal constitutional law. Danforth v. Minnesota, 552 U.S. 264 (2008). State courts may fashion their own retroactivity tests, including partial retroactivity tests. A state supreme court is free to employ a partial retroactivity approach without violating the federal constitution under Danforth. The

procedural changes mandated by Florida's high court in Hurst v. State are applicable only to defendants in Florida, and, consequently, subject to Florida's retroactivity analysis as set forth in Witt v. State, 387 So. 2d 922 (Fla.), cert. denied, 449 U.S. 1067 (1980). See Asay, 210 So. 3d at 15 (noting that Florida's Witt analysis for retroactivity provides "more expansive retroactivity standards" than the federal standards articulated in Teague v. Lane, 489 U.S. 288 (1989)) (emphasis in original; citation omitted).

This Court has repeatedly recognized that where a state court judgment rests on non-federal grounds which provide an adequate basis for the ruling independent of the federal grounds, "our jurisdiction fails." Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935); Michigan v. Long, 463 U.S. 1032, 1038 (1983). See also Cardinale v. Louisiana, 394 U.S. 437, 438 (1969) (reaffirming that this Court has no jurisdiction to review a state court decision on certiorari review unless a federal question was raised and decided in the state court below); Street v. New York, 394 U.S. 576, 581-82 (1969) (same). If a state court's decision is based on separate state law, this Court "of course, will not undertake to review the decision." Florida v. Powell, 559 U.S. 50, 57 (2010).

Florida's retroactivity analysis is a matter of state law.

This fact alone militates against the grant of certiorari in this case. It should also be noted that this Court has repeatedly denied certiorari to review the Florida Supreme Court's retroactivity decisions following the issuance of Hurst v. State. See, e.g., Asay v. State, 210 So. 3d 1 (Fla. 2016), cert. denied, 138 S. Ct. 41 (2017); Hitchcock v. State, 226 So. 3d 216 (Fla.), cert. denied, 138 S. Ct. 513 (2017); Lambrix v. State, 227 So. 3d 112 (Fla.), cert. denied, 138 S. Ct. 312 (2017); Hannon v. State, 228 So. 3d 505 (Fla.), cert. denied, 138 S. Ct. 441 (2017); Branch v. State, 234 So. 3d 548 (Fla.), cert. denied, 138 S. Ct. 1164 (2018); Cole v. State, 234 So. 3d 644 (Fla.), cert. denied, 138 S. Ct. 2657 (2018); Kaczmar v. State, 228 So. 3d 1 (Fla. 2017), cert. denied, 138 S. Ct. 1973 (2018); Zack, III, v. State, 228 So. 3d 41 (Fla. 2017), cert. denied, 138 S. Ct. 2653 (2018); Jones v. State, 234 So. 3d 545 (Fla), cert. denied, 138 S. Ct. 2686 (2018).

Walton's argument before this Court is that the Florida Supreme Court's decision to limit retroactive application of recent changes to its capital sentencing procedures violates the Eighth Amendment; Walton also impliedly alleges a violation of the Equal Protection Clause of the Fourteenth Amendment. In Walton's view, proof of an aggravating factor is an element of the offense of "capital murder" (Walton's term), thus rendering

it a substantive requirement that should take it outside the ambit of Florida's retroactivity rule. Walton's claim of constitutional error fails for several reasons.

First of all, Walton's assertion that Florida has redefined the crime of first degree murder to include aggravating factors as elements of the offense of "capital murder" (Petition, p. 9-10) is wrong. The Florida legislature did nothing more than change the procedural mechanism employed to determine whether a given defendant should be sentenced to death. Indeed, the Florida Supreme Court has recently rejected the very assertion presently being made by Walton- aggravating factors are not elements, but are instead penalty phase findings that must be made by the jury. Foster v. State, ___ So. 3d ___, 2018 WL 6379348 (Fla. Dec. 6, 2018).

Undaunted by the absence of legal support for his position, Walton boldly asserts that Florida's "arbitrary" decision not to offer him the benefit of the retroactive application of the revised penalty phase statute not only violates his Eighth Amendment rights but also implicates the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments. His claim hinges on his assertion that he is being treated differently from other capital inmates who will get the benefit of the revised statute because they have been awarded new

penalty phase trials. One example he cites is that of James Armando Card. Examination of Card's case demonstrates that Walton and Card are not similarly situated, however.

In Card v. Jones, 210 So. 3d 47, 48 (Fla. 2017), the Florida Supreme Court held:

> Card's sentence of death, which his penalty phase jury recommended by a vote of eleven to one, became final when the United States Supreme Court denied Card's petition for writ of certiorari on June 28, 2002. See Card v. State, 803 So. 2d 613 (Fla. 2001), cert. denied Card v. Florida, 536 U.S. 963, 122 S. Ct. 2673, 153 L.Ed.2d 845 (2002); see also Fla. R. Crim. P. 3.851(d)(1)(B). We have held that Hurst applies retroactively to "defendants whose sentences became final after the United States Supreme Court issued its opinion in Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L.Ed.2d 566 (2002)]." Mosely v. State, 209 So. 3d 1248, 1276 (Fla. 2016). Thus, Hurst applies retroactively to Card, whose sentence became final four days after the United States Supreme Court issued its opinion in Ring.

Id.

Regardless of when Card's murder took place, his death sentence was final after Ring was decided. Walton's death sentence, on the other hand, was final before Ring was decided. The different outcome in Walton's case is not a violation of equal protection, but is instead based on a reasoned application of Florida law; merely because Walton does not like that outcome fails to establish a constitutional violation. See, e.g., City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985) ("The Equal Protection Clause of the Fourteenth Amendment

commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike.") (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)).

The same analysis applies in the case of J.B. Parker; while his crimes occurred in 1982, his sentence did not become final until 2004 because of a successful postconviction challenge that resulted in a new penalty phase. Parker v. State, 873 So. 2d 270 (Fla. 2004). Walton and Parker are not similarly situated, and not entitled to the same outcome with regard to Florida's retroactivity analysis. Walton's position that Florida's high court is making arbitrary rulings is merely an expression of his disagreement with the Court's rulings. Florida's high court rejected Walton's argument, but the fact that it has done so consistently and on the same grounds as many other cases undercuts his claim that the court is ruling arbitrarily.

To the contrary, Florida's decision to grant limited retroactivity to its new capital procedural statutes is wholly consistent with Federal constitutional law. Schriro v. Summerlin, 542 U.S. 348 (2004). New rules of law such as that announced in Hurst v. Florida do not usually apply to cases that are final. See Whorton v. Bockting, 549 U.S. 406, 407 (2007)

(explaining the normal rule of nonretroactivity and holding the decision in Crawford v. Washington, 541 U.S. 36 (2004), was not retroactive). Instead, the general rule is one of nonretroactivity for cases on collateral review, with narrow exceptions. See Teague v. Lane, 489 U.S. 288, 307 (1989) (observing that there were only two narrow exceptions to the general rule of nonretroactivity for cases on collateral review).

Furthermore, certain matters are not retroactive at all. Hurst v. Florida was based on this Court's holding in Ring v. Arizona, 536 U.S. 584 (2002), which in turn was based on Apprendi v. New Jersey, 530 U.S. 466 (2000). This Court has held that "Ring announced a new **procedural rule** that does not apply retroactively to cases already final on direct review." Schriro v. Summerlin, 542 U.S. 348, 352 (2004) (emphasis added).

In Griffith v. Kentucky, 479 U.S. 314, 328 (1987), this Court held "that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." Under this "pipeline" concept, only those cases not yet final would receive the benefit from alleged Hurst error. Retroactivity under Griffith (and, for that matter,

Teague) depends on the date of the finality of the direct appeal. There is nothing about Florida's decision to grant partial retroactivity that is contrary to this Court's jurisprudence.

Retroactive application of a new development in the law under any analysis means that some cases benefit from the new development while other cases will not, depending on a date. Drawing a line between newer cases that will receive benefit of a new development in the law and older final cases that will not is part and parcel of the landscape of any retroactivity analysis. That some cases will be treated differently from others based on the age of the case is not arbitrary and capricious, as Walton contends; it is simply a fact inherent in any retroactivity analysis.

Aside from the question of retroactivity, certiorari would be inappropriate in this case because there is no underlying federal constitutional error as Hurst v. Florida did not address the process of weighing the aggravating and mitigating circumstances or suggest that the jury must conduct the weighing process to satisfy the Sixth Amendment. The unanimous verdict by Walton's jury establishing his guilt of a contemporaneous murder was clearly sufficient to meet the Sixth Amendment's factfinding requirement, and he was properly rendered eligible for a death

sentence at that point. Petitioner's contemporaneous murder conviction, an aggravator under well-established Florida law, was sufficient to meet the Sixth Amendment's fact-finding requirement under this Court's precedent.[6] See Jenkins v. Hutton, 137 S. Ct. 1769, 1772 (2017) (noting that the jury's findings that defendant engaged in a course of conduct designed to kill multiple people and that he committed kidnapping in the course of aggravated murder rendered him eligible for the death penalty); Kansas v. Carr, 136 S. Ct. 633, 642 (2016) (rejecting a claim that the Constitution requires a burden of proof on whether or not mitigating circumstances outweigh aggravating circumstances, noting that such a question is "mostly a question of mercy."); Alleyne v. United States, 570 U.S. 99, 111 n.1 (2013) (recognizing the "narrow exception . . . for the fact of a prior conviction" set forth in Almendarez-Torres v. United States, 523 U.S. 224 (1998)).

Lower courts too have almost uniformly held that a judge may perform the "weighing" of factors to arrive at an appropriate sentence without violating the Sixth Amendment. See State v. Mason, 108 N.E.3d 56, 64 (Ohio 2018) ("Nearly every court that has considered the issue has held that the Sixth Amendment is applicable to only the fact-bound eligibility

[6] § 921.141(6)(d), Fla. Stat. (listing murder committed in the course of an armed robbery as an aggravator).

decision concerning an offender's guilt of the principle offense and any aggravating circumstances" and that "weighing is not a factfinding process subject to the Sixth Amendment.") (string citations omitted); United States v. Sampson, 486 F.3d 13, 32 (1st Cir. 2007) ("As other courts have recognized, the requisite weighing constitutes a process, not a fact to be found."); United States v. Purkey, 428 F.3d 738, 750 (8th Cir. 2005) (characterizing the weighing process as "the lens through which the jury must focus the facts that it has found" to reach its individualized determination); State v. Gales, 658 N.W.2d 604, 628-29 (Neb. 2003) ("[W]e do not read either Apprendi or Ring to require that the determination of mitigating circumstances, the balancing function, or proportionality review to be undertaken by a jury"). The findings required by the Florida Supreme Court in Hurst v. State involving the weighing and selection of a defendant's sentence are not required by the Sixth Amendment. See, e.g., McGirth v. State, 209 So. 3d 1146, 1164 (Fla. 2017). Thus, there was no Sixth Amendment error in this case.

Florida's decision to limit retroactive application of its new procedural rules is consistent with this Court's precedent. Walton has failed to establish any reasonable ground for this Court to accept certiorari review.

II. FLORIDA'S REJECTION OF WALTON'S MERITLESS ARGUMENTS BASED ON APPLICATION OF ITS OWN PRECEDENT DOES NOT RISE TO THE LEVEL OF AN EIGHTH AMENDMENT VIOLATION.

Next, Walton complains that the Florida Supreme Court arbitrarily ignored his claim regarding the trial court's disposition of his postconviction motion alleging newly discovered evidence. In his petition to the Florida Supreme Court, Walton asserted that two Florida decisions, Swafford v. State, 125 So. 3d 760 (Fla. 2013) and Hildwin v. State, 141 So. 3d 1178 (Fla. 2014) require cumulative analysis of all admissible evidence, *including* the likely effects of Florida's newly enacted capital sentencing procedures that require penalty phase unanimity. F.S. 921.141 (2017). The Florida high court rejected this argument; treating changes in state law as newly discovered "facts," the Court held, would eviscerate the Court's retroactivity jurisprudence under Witt v. State, 387 So. 2d 922 (Fla.), cert. denied, 449 U.S. 1067 (1980). Walton at 252. Walton, who believes that Florida's high court arbitrarily failed to address his claim, asks this Court to intervene.

Under Florida law, postconviction claims must be filed within one year after the defendant's conviction becomes final unless one of two exceptions applies- the proposed claim relies on newly discovered factual evidence, or a new and fundamental

constitutional right that has been held to apply retroactively. See Fla. R. Crim. P. 3.851(d)(2)(B). The postconviction court found that Walton's successive postconviction motion, filed long after the one-year deadline, failed to meet either exception, a determination that was affirmed by Florida's high court.

Walton's claim was based in part on the fact that one of his death-sentenced co-defendants had been re-sentenced to life.[7] In addition, Walton also asserted the novel argument that enactment of a revised capital sentencing statute was a newly discovered fact. In Walton's view, Florida's jurisprudence governing newly discovered evidence mandates consideration of statutory revisions in the same manner as any other newly discovered fact under Florida law, which requires a cumulative examination of newly discovered facts along with all admissible evidence in assessing the likelihood of a more favorable outcome on retrial. The Florida Supreme Court, however, rejected Walton's argument in no uncertain terms:

> This Court applies the Witt v. State, 387 So. 2d 922 (Fla. 1980), standard to determine whether decisional changes in the law require retroactive application. See Coppola v. State, 938 So. 2d 507, 510-11 (Fla. 2006); see also State v. Glenn, 558 So. 2d 4, 6 (Fla.

[7] Although not specifically raised by Walton in argument before this Court, Respondent notes that this Court in Pulley v. Harris, 465 U.S. 37 (1984), held that comparative proportionality review of death sentences is not constitutionally required and upheld California's death penalty statute despite the lack of such review.

> 1990) ("[A]ny determination of whether a change in the law requires retroactive application should be decided upon traditional principles pertaining to changes in decisional law as set forth in Witt." (citing McCuiston v. State, 534 So. 2d 1144, 1146 (Fla. 1988))). Viewing decisional changes in the law as newly discovered "facts" would erase the need for a retroactivity analysis pursuant to Witt. See Coppola, 938 So. 2d at 510-11. Yet Walton contends that he satisfies the second prong of the newly discovered evidence standard because it is probable that a resentencing jury will not unanimously return death recommendations, and thus, it is probable that life sentences will be imposed. Clearly, Walton is attempting to circumvent this Court's retroactivity holding in Asay V when he asserts that Hurst constitutes a newly discovered fact and is applicable through a cumulative analysis. Thus we conclude that Walton's attempt to shoehorn Hurst retroactivity through a newly discovered evidence claim is meritless. Accordingly, we hold that the postconviction court properly denied Walton's motion.

Walton at 251-252. In this regard, Walton's assertion that the Florida Supreme Court ignored his claim is plainly in error.

Walton also contends, however, that the Florida Supreme Court failed to address his constitutional claims alleging due process, equal protection, and Eighth Amendment violations. Evaluation of the validity of this claim requires more detailed examination of the argument presented below.

In his brief to the Florida Supreme Court, Walton's argument went as follows: First, because the new penalty phase procedures are substantive, they should be applied retroactively (Respondent's Appendix A, p. 14). Second, because the

legislature's changes rendered the jury's penalty phase recommendation more "reliable" (Id., p. 22), it was a violation of equal protection to limit the statute's application only to some death sentenced prisoners rather than to all (Id., p. 29). Finally, Walton asserted that failing to correct allegedly unreliable death sentences (i.e., those capital defendants ineligible for Hurst relief) was an arbitrary application of the law that violated the Eighth Amendment (Id., p. 33).

While claiming that the Florida Supreme Court ignored this claim and in doing so violated the Eight Amendment, Walton has inexplicably failed to mention the fact that every one of these claims has previously been addressed and rejected by Florida's high court, and that citations for those rulings appear in the opinion on review. See Asay v. State, 224 So. 3d 695 (Fla.), cert. denied, 138 S. Ct. 41 (2017); Hitchcock v. State, 226 So. 3d 216 (Fla.), cert. denied, 138 S. Ct. 513 (2017). These opinions are plainly referenced in the state court's decision. Walton at 253. Notably, counsel of record in Asay is also counsel for Walton before this Court. This is no Federal constitutional violation; certiorari review by this Court would involve nothing more than an examination of Florida's application of its own state law.

In sum, the questions Walton presents do not offer any matter which comes within the parameters of this Court's Rule 10. He does not identify any direct conflict with this Court or other courts, nor does he offer any unresolved, pressing federal question. He challenges only the application of this Court's well-established principles to the Florida Supreme Court's decision. As Walton does not demonstrate any compelling reasons for this Court to exercise its certiorari jurisdiction under Rule 10, this Court should deny the petition.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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