

CAPITAL CASE

DOCKET NO. 18-9267

IN THE SUPREME COURT OF THE UNITED STATES

JOHN LOVEMAN REESE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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

**PETITIONER'S REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR CERTIORARI**

SEAN T. GUNN
KATHERINE A. BLAIR
Office of the Federal Public Defender
Northern District of Florida
Capital Habeas Unit
227 North Bronough St., Suite 4200
Tallahassee, Florida 32301
(850) 942-8818
sean_gunn@fd.org
katherine_blair@fd.org

CHRISTOPHER J. ANDERSON
Counsel of Record
Law Office of Christopher J. Anderson
2217 Florida Boulevard, Suite A
Neptune Beach, Florida 32266
(904) 246-4448
chrisaab1@gmail.com

COUNSEL FOR PETITIONER

The petition and the brief in opposition in this case join issue regarding the cert.-worthiness of federal constitutional challenges to the Florida Supreme Court's rulings in *Asay v. State*¹ and *Mosley v. State*,² which grant retroactive relief under *Hurst v. Florida*³ and *Hurst v. State*⁴ to condemned inmates whose death sentences had not become final as of June 24, 2002 but deny such relief to inmates whose death sentences were final on that date.

On April 24, 2019, the Florida Supreme Court entered an order in *Owen v. State*, No. SC 18-810, providing that:

“Following the parties’ responses to this Court’s June 25, 2018, order to show cause, the Court determines that full briefing would be helpful. Appellant’s brief is to be filed on or before May 14, 2019; appellee’s brief shall be filed twenty days after filing of appellant’s brief; and appellant’s reply brief shall be filed twenty days after filing of appellee’s brief. The parties’ briefs shall address, but are not limited to, whether this Court should recede from the retroactivity analysis in *Asay v. State*, 210 So. 3d 1 (Fla. 2016); *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016); and *James v. State*, 615 So. 2d 668 (Fla. 1993).”

Petitioner respectfully suggests that this Court should defer consideration of his petition until after the Florida Supreme Court has handed down its *Owen* decision clarifying the status of the *Asay-Mosley* dividing line, at which time petitioner and respondent can file supplemental briefs dealing with the impact of that decision on the federal issues in controversy. It has always been this Court’s practice to avoid adjudication when the state-law rules that frame a federal constitutional question

¹ 210 So.3d 1 (Fla. 2016).

² 209 So.3d 1248 (Fla. 2016).

³ 136 S. Ct. 616 (2016).

⁴ 202 So.3d 40 (Fla. 2016).

are in flux and are susceptible to clarification by further proceedings. *E.g., Minnick v. California Department of Corrections*, 452 U.S. 105 (1981); *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947); *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982). A state supreme court's explicit announcement that it is currently reconsidering the body of rulings challenged by a cert. petition in this Court presents an extreme instance of prematurity calling for postponement of the decision whether that petition is cert.-worthy.

Respectfully submitted,

SEAN T. GUNN
KATHERINE A. BLAIR
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Northern District of Florida
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227 North Bronough St., Suite 4200
Tallahassee, Florida 32301
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