No. 18-9516

IN THE
SUPREME COURT OF THE UNITED STATES

STARQUINESHIA PALMER,
Petitioner

v.

STATE OF FLORIDA,
Respondent

On Petition for a Writ of Certiorari
to the District Court of Appeal,
First District of Florida

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

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MOTION FOR LEAVE TO PETITION FOR REHEARING

On October 7, 2019, this Court denied Petitioner Starquineshia Palmer's Petition for Writ of Certiorari. Petitioner, through undersigned counsel, desired to file a Petition for Rehearing because of the importance of the issue raised, the deadline for filing such being 25 days from the date of the denial.

Undersigned counsel received in his email a copy of this Court's denial of October and stamped on it was a filing date of October 11th. (See copy attached) Because it is common for a judge to issue an order but it not get filed with the clerk for several days afterwards, undersigned counsel assumed such was the case here and used the October 11, 2019 date as the start date for the 25 days for filing a Petition for Rehearing, which would make it due on Tuesday, November 5, 2019. Undersigned counsel accordingly efiled and mailed the requisite paper copies of Petitioner's Petition for Rehearing on November 4, 2019, thinking he was actually one day early.

On the evening of November 21st, undersigned counsel did a routine check of the docket in the instant case and noticed a curious entry for November 7, 2019, stating, ""Petition of Starquineshia Palmer for rehearing not accepted for filing." As soon as the Count had opened on November 22, 2019, undersigned counsel called the Clerk's office and was referred to Supervisor Jeff Atkins, who figured out what had happened. The copy of the order undersigned counsel was working from was actually a copy the First District Court of Appeal received, date stamping it then emailing it to counsel. Because the electronic filing system often results in the receipt of multiple copies of documents, undersigned counsel believes either he never received a copy of the order from the Supreme Court, or what is more likely, he did receive a copy but on opening it and seeing what it was, thought it was a duplicate of the order already received, and he deleted it.

Petitioner wants to file a Petition for Writ of Habeas Corpus pursuant to 28 U. S. C. § 2254, in the Northern District of Florida as her final step in her post conviction

effort, but because she filed her final post conviction motion so late, she has only 37 days left in which to do this once the instant petition's denial is final. Undersigned counsel was appointed to do the appeal of her final post conviction motion and raised in that appeal only the single issue that has been presented in Petitioner's Certiorari, and when the appellate court denied the appeal, undersigned counsel informed Petitioner he would be willing to present it to the United States Supreme Court *pro bono* because of the perceived importance of the issue. Undersigned counsel would also like to add for the Court's consideration that Petitioner is illiterate so has great difficulty exercising her avenues of post conviction.

Without this Court granting Petitioner leave to file her Petition for Rehearing, the remaining 37 days she had for filing her § 2254 habeas corpus will have begun counting down on October 7, 2019, expiring on November 13, 2019, depriving Petitioner of her of her right to file her § 2254 Petition for Writ of Habeas Corpus. Petitioner has been convicted of killing her lover in a fit of passion and has received a life sentence.

Petitioner therefore moves this Court for leave to file her Petition of Rehearing, which she has attached to this motion as instructed by Mr. Atkins today, and accept it as timely filed.

Respectfully submitted this 22nd day of November, 2019.

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Scott S. Harris
Clerk of the Court
(202) 479-3011

October 7, 2019

Clerk
District Court of Appeal of Florida, First District
301 Martin L. King, Jr., Blvd.
2000 Drayton Drive
Tallahassee, FL 32311

Re: Starquineshia Palmer
v. Florida
No. 18-9516
(Your No. 1D17-3601)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

No. 18-9516

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Counsel for Petitioner

PETITION FOR REHEARING

Pursuant to this Court's Rule 44.2, Petitioner Starquineshia Palmer respectfully petitions for rehearing of the Court's order denying certiorari in this case, entered on October 7, 2019. Ms. Palmer requests that this Court grant this petition, vacate his her conviction and life sentence, and remand his case for further proceedings in accordance with a clarification of this Court's decision in *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

GROUNDS FOR REHEARING

Petitioner argues that she was denied her right to a trial by jury as contemplated by the Sixth Amendment because of the decision in *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) which held there is no prejudice to a defendant who is tried by a 6-person jury versus a 12-person jury for a serious criminal charge, without taking into consideration that anything that reduces a defendant's chances of a hung jury would prejudice that defendant. Florida courts routinely deny relief on arguments like Petitioner's based on *Williams*, which motivated Petitioner to file her petition in this Court.

Petitioner pointed out to the Court in her position that Florida is the only state in the Union that uses a 6-person jury for serious crimes. [1] All other states use a 12-person jury, as was customary under the Common Law of England. In this Court's decision in *Ballew v. Georgia*, 435 U.S. 223, 98 S. Ct. 1029, 55 L. Ed. 2d 234 (1978), it held that a Georgia state statute authorizing criminal conviction upon the unanimous

[1] F.S. 913.10 – Number of jurors.—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases. (1970 to present)

vote of a jury of five was unconstitutional, that the constitutional minimum size for a jury hearing petty criminal offenses was held to be six.

> [224] This case presents the issue whether a state criminal trial to a jury of only five persons deprives the accused of the right to trial by jury guaranteed to him by the Sixth and Fourteenth Amendments.
> . . .
> [242] . . . the data outlined above raise substantial doubt about the ability of juries truly to represent the community as membership decreases below six. If the smaller and smaller juries will lack consistency, as the cited studies suggest, then the sense of the community will not be applied equally in like cases. Not only is the representation of racial minorities threatened in such circumstances, but also majority attitude or various minority positions may be misconstrued or misapplied by the smaller groups.
> . . .
> . . . the empirical data cited by Georgia do not relieve our doubts. The State relies on the Saks study for the proposition that a decline in the number of jurors will not affect the aggregate number of convictions or hung juries. Tr. of Oral Arg. 27. This conclusion, however, is only one of several in the Saks study; that study eventually concludes:
>
> "Larger juries (size twelve) are preferable to smaller juries (six). They produce longer deliberations, more communication, far better community representation, and, possibly, greater verdict reliability (consistency)." Saks 107.
>
> Far from relieving our concerns, then, the Saks study supports the conclusion that further reduction in jury size threatens Sixth and Fourteenth Amendment interests.
> . . .
>
> [245] Petitioner, therefore, has established that his trial on criminal charges before a five-member jury deprived him of the right to trial by jury guaranteed by the Sixth and Fourteenth Amendments.

Id. at U.S. 224, 242, 245.

The decision in *Ballew* applied to criminal misdemeanors so this Court has left unanswered whether the various states should consider the decision in *Ballew* equally applicable to serious offenses, such as Florida has done, and if such is the case, this Court should take this opportunity to rehear its decision in the instant petition to clarify this point so the other 49 states can save time and money in trying people for serious offenses

with 6-person juries over 12-person juries. It would be of great public importance for this Court to provide a written opinion stating that while it is unconstitutional to try a person with a 5-person jury because it is too small to meet the requirements of the Constitution that a jury be a representative of the community and too small to meet the requirements of the Constitution and too small to generate sufficient give and take in discussion essential to a fair trial, but that the addition of one more person overcomes those shortcomings, making the jury Constitutional.

Furthermore, by the Court remaining silent on the State of Florida's argument that Petitioner was not prejudiced by being tried by a 6-person jury versus a 12-person jury totally ignoring the fact that Petitioner's chances of a hung jury would undoubtedly be less with the 6-person jury than a 12-person jury, which is clearly prejudice.

Petitioner does not believe the Court would agree with the conclusions by the State of Florida in denying her relief based on *Williams* and therefore prays the Court rehear its decision of October 7, 2019, to clarify that Petitioner did indeed suffer prejudice with a jury of 6-people over a jury of 12-people because the chances of a hung jury are greater with a 12-person jury.

Respectfully submitted this 22nd day of November, 2019.

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