

10-7251 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM MCNEAL,
Petitioner,

STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SECOND DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

William Ray McNeal
William McNeal
Columbia C.I.
216 S.E. Corrections Way
Lake City, Fl. 32025

QUESTION PRESENTED

Whether, when determining if a defendant's offense can be reclassified to the next highest degree, Florida's interpretation of "essential element" as being only those elements contained in the definition of the crime itself is contrary to this Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000)?

PARTIES TO THE PROCEEDING

1. William McNeal was the Appellant below and is the Petitioner here.
2. The State of Florida, through the Attorney General, was the Appellee below and is the Respondent here.

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TABLE OF AUTHORITIES

Cases

<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	3, 4, 5
<i>State v. Tinsley</i> , 683 So.2d 1089 (Fla. 5 th DCA 1996)	3

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CITATION TO REPORT

The decision McNeal seeks certiorari review of does not have a citation as far as he knows. However, it can be found at *McNeal v. State*, 2D18-4712 (Fla. 2d DCA, June 21, 2019).

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review “final judgments...rendered by the highest court of a State in which a decision could be had...” under 28 U.S.C. §1257(a), where “any...right...is claimed under the Constitution...,” by petition for writ of certiorari. Per S.Ct. Rule 13, such a petition must be filed within 90 days after entry of the judgment.

This Court has jurisdiction. Because the Second District Court of Appeal did not issue an opinion, it is the highest state court in Florida in which a decision could be had. Additionally, McNeal’s issue concerns the Sixth Amendment to the United States Constitution. Finally, the Second District Court of Appeal treated his Motion for Rehearing, Request for Written Opinion, Rehearing En Banc, and Certification, as timely filed and denied it on November, 5, 2019, giving him 90 days from that date to file this petition. See S. Ct. Rule 13.3.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional Provision

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Statutory Provision

Florida Statute, §775.087(1)

Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

- (a) In the case of a felony of the first degree, to a life felony.
- (b) In the case of a felony of the second degree, to a felony of the first degree.
- (c) In the case of a felony of the third degree, to a felony of the second degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense which is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the felony offense committed.

STATEMENT OF THE CASE AND FACTS

On December 15, 2000, William McNeal was charged with attempted first-degree murder. After a jury trial, he was convicted of the lesser-included offense of attempted second-degree murder. At sentencing, McNeal's conviction for a second-degree felony was reclassified to a first-degree felony based on his use of a weapon during the offense. See, §775.087(1), Fla.Stat. (2000). This had the effect of increasing his maximum sentence exposure from fifteen years to thirty years. He was sentenced to thirty years.

Relevant to this petition, McNeal filed a Motion to Correct Illegal Sentence, under Fla.R.Crim.P. 3.800(a). Appendix A. In that motion, McNeal argued that his sentence was illegal as he did not qualify for reclassification. Appendix A, p. McNeal based his argument on the language of the statute - which prohibits reclassification when the use of a weapon is an essential element of the crime - and the definition of essential element in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Appendix A, p. Specifically, he argued that the use of a weapon was an essential element because it increased his sentence exposure and therefore, per the plain language of the statute, his offense could not be reclassified. Appendix A, p.

The trial court denied the motion, finding that reclassification was proper as the use of a weapon was not an essential element of McNeal's offense. Appendix B, p. Relying on Florida precedent, the trial court concluded that "essential element" refers to those elements in the substantive criminal statute. Appendix B, p.

McNeal appealed the denial to the Second District Court of Appeal, arguing that the trial court erred because *Apprendi* does not limit what constitutes an "essential element" to only those found in the definition of the crime. Appendix C, p. The Second DCA affirmed without written opinion. Appendix D. McNeal filed a Motion for Rehearing, Request for Written Opinion, Rehearing En Banc, and Certification. Appendix E. The Second DCA treated the motion as timely filed and denied it on November, 5, 2019. Appendix F.

This petition follows.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Florida's Interpretation Of Essential Element As Being Only Those Elements Contained In The Definition Of The Particular Criminal Offense Is Contrary To This Court's Decision In *Apprendi*

Merits

Under Florida Statutes §775.087(1), whenever a person is convicted of a felony where they used a weapon, that felony can be reclassified to the next highest degree. There is one exception: when the use of a weapon is an essential element of the crime, it cannot be reclassified. *Id.*

When applying this statute, Florida has interpreted "essential element" as referencing only those elements contained within "the substantive criminal law which defines the crime in question." *State v. Tinsley*, 683 So.2d 1089, 1090 (Fla. 5thDCA 1996). This interpretation contradicts this Court's definition of essential element in *Apprendi*.

In *Apprendi*, this Court defined "essential element" by its function: if a fact "is used to describe an increase beyond the maximum authorized sentence, it is the functional equivalent of an element of a greater offense...[and] fits squarely within the usual definition of an "element" of the offense." *Apprendi*, at 494, n. 19. The Court also made clear that the location of the fact does not determine whether it is an essential element of a crime. *Apprendi*, at 495-496. Instead, "the relevant inquiry is one not of form, but of effect-does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" *Id.* at 494.

Applying the proper definition of essential element to the plain language of

§775.087(1) means that McNeal's offense could not be reclassified to a higher degree based on the use of a weapon. Because the use of a weapon increased his maximum sentence exposure from fifteen years to thirty years, it was an essential element of the crime. And per the plain language of the statute, if the use of a weapon is an essential element of the crime, it cannot be reclassified.

While somewhat paradoxical and maybe not what the Legislature intended, the fact is, essential element means what it means and the plain language of the statute says what it says. All that can be done is to apply the proper definition of essential element to the plain language of the statute.

Florida's failure to do so has resulted in McNeal's serving a sentence twice as long as he would have otherwise been allowed to receive. This cannot be allowed to stand.

Beyond McNeal

This issue goes beyond McNeal. If he is correct, then for the last nineteen years, Florida courts have been failing to adhere to this Court's precedent, with the result that nineteen years' worth of defendants have been sentenced to twice as long in prison - if not more - than what they would have received otherwise. If this Court does not intervene now, Florida courts will continue to define "essential element" contrary to *Apprendi* - and the number of defendant's serving decades longer in prison than they should will continue to rise.

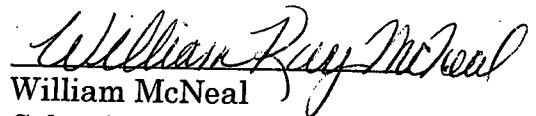
To correct these injustices and prevent any more from occurring, this Court should grant certiorari.

CONCLUSION

Based on the above, this Court should grant certiorari.

CERTIFICATE OF SERVICE

Per 28 U.S.C. §1746, I certify under penalty of perjury that a true and correct copy of the foregoing was placed in the prison mailing system - in accordance with the applicable legal mail rules and with first-class postage pre-paid - to the Office of the Attorney General, Concourse Center 4, 3507 E. Frontage Rd., Ste. 200, Tampa, Fl. 33607-7013 and that the original was placed in the hands of prison officials for mailing to the Clerk of Court, U.S. Supreme Court, 1 First St. NE, Washington, DC 20543, on this 30th day of DECEMBER, 2019.


William McNeal
Columbia C.I.
216 S.E. Corrections Way
Lake City, Fl. 32025