No.

In the
Supreme Court of the United States

ANGEL SANTIAGO-GONZALEZ,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Whether a defendant's right to due process as guaranteed by the Fourteenth Amendment through requiring that every element of any offense to be proven beyond a reasonable doubt are violated when the jury instructions do not require all of the determinations required by a state statute for the imposition of a sentence beyond the statutory maximum for that offense, deemed by this Court as "functional equivalents" of elements of that same offense, to be found proven beyond a reasonable doubt by a unanimous verdict from the jury.

STATEMENT OF RELATED PROCEEDINGS

Santiago-Gonzalez v. State, No. SC18-806 (Fla. opinion and judgment rendered on June 25,2020; order denying rehearing on September 17, 2020 and mandate issued on October 5, 2020).

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INTRODUCTION

In 2016, this Court found Florida's death penalty statute to be unconstitutional because it required the judge rather than the jury to make the determinations necessary to impose the death penalty, a sentence which exceeded the statutory maximum for capital murder of life without parole. In 2017, Florida amended its death penalty statute to require a unanimous verdict as to three determinations by the jury for the defendant to become eligible for the death penalty which were the presence of at least one aggravating factor beyond a reasonable doubt, whether the aggravating factor(s) are sufficient for the imposition of the death penalty, and whether the aggravating factors outweigh any mitigating factors.

The imposition of the death penalty is a penalty beyond the statutory maximum of life without parole for capital murder, and is not legally possible without the determinations of the sufficiency of aggravating factors and that the aggravating factors outweigh mitigating factors. Since the death penalty cannot be imposed without these determinations, the question before this Court is whether such determinations are functional equivalents to elements of capital murder because they are required for the imposition of the death penalty which should be found by a unanimous jury be found beyond a reasonable doubt to ensure a fair trial and due process required by the Fourteenth Amendment.

OPINION BELOW

Santiago-Gonzalez v. State, 301 So. 3d 157 (2020). Appendix 1-23.

JURISDICTION

The Florida Supreme Court issued its judgment on June 25, 2020 and denied Petitioner's motion for rehearing on September 17, 2020. This Court has extended the time for filing petitions for certiorari to 150 days for petitions due on or after March 19, 2020. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1257(a).

Undersigned counsel acknowledges this Petition should have been timely filed on or before February 15, 2021. Due to multiple staff changes within undersigned's division, Petitioner's case was reassigned to undersigned counsel on February 24, 2021 when undersigned realized this Petition had not been filed. This Court has the discretion to overlook violations of time limits where the ends of justice warrant it. *See, Tagilanetti v. United States*, 394 U.S. 316 n.1 (1969); *Smith v. Mississippi*, 373 U.S. 238 (1963) (where petition was a few days late); *Arnold v. North Carolina*, 376 U.S. 773 (1964) (where the death penalty is imposed). Undersigned counsel filed this petition within a week of being assigned to it, and would request this Court to overlook the untimeliness of the filing of this petition in the interest of justice.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any state deprive any person of life, liberty, or property without due process of law."

STATEMENT OF THE CASE

In 2016, Petitioner, Angel Santiago-Gonzalez, pleaded guilty to the first-degree murder of his cellmate, Donald Burns. At the time of the 2014 attack that resulted in Burns' death, both men were inmates at the Reception and Medical Center (RMC), a Florida Department of Corrections facility. *Santiago-Gonzalez*, 301 So. 3d at 161. App. 2.

Around 9:40 p.m. on the night of January 9, 2014, corrections officers responded to a disturbance in the K dormitory at the RMC. The source of the banging noise was inmates who were trying to get the attention of the corrections officers and direct them to the cell where Burns and Santiago-Gonzalez were housed. When the officers reached the cell, Santiago-Gonzalez was standing inside the cell, and Burns, the victim of a brutal stabbing, was lying on the floor. Burns was also tied up, his hands and his feet both bound. *Id.* Santiago-Gonzalez had a knife in his hand that he refused to relinquish to the corrections officers until a video camera was brought to the cell to record him. A video camera was brought to the cell, and once the recording began, Santiago-Gonzalez slid the knife under the cell door. He was restrained without incident. While being escorted to a holding cell, Santiago-Gonzalez commented that he was not interested in homosexual activity. A medical assessment of Santiago-Gonzalez conducted shortly thereafter confirmed that he was uninjured. In Burns' cell, ligature cutters were used to remove the restraints that Santiago-Gonzalez placed on him. Burns received multiple stab wounds, including a severe neck wound, believed to be life-threatening. Burns was

weak but communicative, and he repeatedly said that he was afraid he was going to die. *Id.*

Santiago-Gonzalez told officers that Burns touched his buttocks underneath his boxers and that Burns had an erection. Santiago-Gonzalez stated he became irate. Then, Santiago-Gonzalez tore up his bed sheets into multiple pieces he used to tie up Burns, and stabbed Burns in the face, eye, heart, chest, back, and hand with a homemade shank. Santiago-Gonzalez stated he blacked out due to "psych" medication. *Santiago-Gonzalez,* 301 So. 3d at 162-163. App. 5. Burns was taken to the hospital where he was treated for stab wounds, and died six months later. *Id.* at 163. App. 6.

Following his guilty plea, Santiago-Gonzalez received a non-jury penalty phase in February 2018, where the State presented evidence to support the existence of four aggravating factors and the defense presented evidence of 57 mitigating factors. *Id.* at 166. App. at 9

In 2016, this Court found Florida's death penalty statute to be unconstitutional because the statute allowed the judge, rather than the jury, to make the determinations based upon the recommendations from the jury required for the imposition of the death penalty. *Hurst v. Florida*, 136 S. Ct. 616 (2016). In 2017, Florida amended its death penalty statute, § 921.141, Florida Statutes, to adhere to *Hurst*. § 921.141 of Florida Statutes (2017) provides:

> (2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

> (a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).
>
> (b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:
>
> 1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.
>
> 2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:
>
> a. Whether sufficient aggravating factors exist.
>
> b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
>
> c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

When a defendant waives his or her right to a jury during the penalty phase, the following statute applies:

> If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist *beyond a reasonable doubt*. . . . . In each case in which the court imposes a sentence of death, the court shall, considering the records of the trial and the sentencing

> proceedings, enter a written order addressing the aggravating factors . . . found to exist, the mitigating circumstances . . . reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence.

§ 921.141(3)(b), Fla. Stat. (2017); § 921.141(4), Fla. Stat. (2017) (emphasis added).

The trial court found the existence of four aggravating factors and assigned weight as follows: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment (great weight); (2) prior violent felony (great weight); (3) the capital felony was especially heinous, atrocious, or cruel (HAC) (very great weight); and (4) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP) (very great weight). The court found as follows with respect to the two statutory mitigating circumstances argued by the defense: (1) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance (not proven); (2) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired (not proven). *Santiago-Gonzalez*, 301 So. 3d at 166-168. App. 9-11. The trial court made the following findings as to nonstatutory mitigating factors ranging from no weight to moderate weight:

> (1) the defendant suffers from severe developmental trauma (not proven); (2) impact of life in Luis Llorens

Torres housing (moderate weight); (3) the defendant was the product of statutory rape (very little weight); (4) the defendant's father was absent (very little weight); (5) the defendant's mother was intellectually disabled (very little weight); (6) the defendant's mother's impaired parenting skills (very little weight); (7) the defendant's mother abandoned him (little weight); (8) the defendant's grandfather was violent and abusive (very little weight); (9) the defendant's grandfather was a pedophile (very little weight); (10) the defendant's grandmother failed to protect children (very little weight); (11) the defendant's sexual abuse in the Llorens Community (moderate weight); (12) the defendant's early drug use (very little weight); (13) the defendant's lack of childhood health (very little weight); (14) the defendant's mental illness as a child (very little weight); (15) the home of the defendant's mother (very little weight); (16) the defendant's mother was a prostitute (very little weight); (17) the defendant's siblings were neglected (very little weight); (18) the defendant was placed in juvenile detention at age nine (moderate weight); (19) the defendant experienced sexual abuse in juvenile detention (moderate weight); (20) the death of the defendant's grandmother (little weight); (21) the defendant's placement with his aunt Gloria as a child (not proven); (22) the defendant's placement with his aunt Maria as a child (not proven); (23) the defendant's lack of education (very little weight); (24) the defendant saved his brother's life (very little weight); (25) the defendant's exposure to violent crimes (moderate weight); (26) the impact of the loss of Santiago-Gonzalez's protective cousin, nicknamed "Luis Llorens" (very little weight); (27) the defendant's opiate addiction as a child (very little weight); (28) the defendant was a victim of violent crime (very little weight); (29) the death of the defendant's father (very little weight); (30) the defendant's family history of drug and alcohol abuse (some weight); (31) the defendant's family history of being victims of violent crimes (some weight); (32) the defendant's family history of criminal behavior (moderate weight); (33) the defendant's family health issues (very little weight); (34) the defendant's family history of mental illness (moderate weight); (35) the defendant's family history of suicide (moderate weight); (36) the defendant is bipolar (very little weight);

> (37) the defendant has clinical depression (some weight); (38) the defendant has PTSD (very little weight); (39) the defendant has complex PTSD (very little weight); (40) the defendant has borderline personality disorder (very little weight); (41) the defendant has antisocial personality disorder (very little weight); (42) the defendant's Baker Act hospitalizations (very little weight); (43) the defendant uses psychotropic medication (very little weight); (44) the defendant has a history of suicide attempts (very little weight); (45) the defendant has a history of self-harm (very little weight); (46) the defendant is an artist (very little weight); (47) the defendant's lifetime of institutionalization (little weight); (48) the defendant was sexually assaulted by victim Donald Burns (not proven); (49) the defendant was the victim of a lewd act by victim Donald Burns (not proven); (50) the defendant pled to first-degree murder (little weight); (51) the defendant waived a jury recommendation on sentencing (little weight); (52) the defendant's courtroom behavior (little weight); (53) the love of Santiago-Gonzalez's family (little weight); (54) other factors in character, background, or life (not proven); (55) other factors in the circumstances of the offense (not proven).

Santiago-Gonzalez, 301 So. 3d. at 168-169. App. 12.

On appeal, Petitioner argued that the failure of the trial court to find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt violated his right to due process under the Fourteenth Amendment because such finding is an element of capital murder. The Florida Supreme Court rejected this argument citing to its prior decision in *Rogers v. State*, 285 So. 3d 872 (Fla. 2019) where it receded from its holding in *Perry v. State*, 210 So. 3d 630 (Fla. 2016) that the findings as to the sufficiency and weight of aggravating factors were elements of capital murder requiring to be proven beyond a reasonable doubt. *Id*. at 177. App. 19-20.

REASONS FOR GRANTING THE PETITION

I. In holding the determinations of sufficiency and weight of the aggravating factors are not the functional equivalent of the elements of capital murder by exposing a defendant to a sentence beyond the statutory maximum, the Florida Supreme Court's decision expressly and directly conflicts with the decisions of this Court, specifically *Apprendi v. New Jersey, Ring v. Arizona, Alleyne v. United States*, and *Hurst v. Florida.*

First-degree murder is a capital felony in Florida. § 782.04(1)(a), Fla. Stat. (2020). This statute specifically states that a defendant convicted of a capital felony shall only be punished by death if "the proceeding held to determine sentence according to the procedure set forth in [section] 921.141 results in a determination that such person shall be punished by death." Otherwise, the defendant will be punished by life without parole. § 775.082(1)(a), Fla. Stat. (2020). § 921.141 of Florida Statutes states:

> (2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.
>
> (a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).
>
> (b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:
>
> 1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

> 2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:
>
> a. Whether sufficient aggravating factors exist.
>
> b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
>
> c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

Thus, determinations made pursuant to § 921.141 subject a defendant to the imposition of the sentence of death which exceeds the statutory maximum of life without parole for first-degree murder as authorized by § 775.82(1)(a).

In *Apprendi v. New Jersey*, 530 U.S. 466, 494 (2000), this Court held that any fact that "expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an "element" that must be submitted to a jury. Two years later, this Court found that the finding of aggravating circumstances to be the "functional equivalent" of elements of capital murder requiring them to be found by a jury rather than a judge because the finding of the aggravating circumstances exposed defendants to the sentence of death which exceeded the statutory maximum of life under Arizona law. *Ring v. Arizona*, 536 U.S. 584 (2002). In *Ring,* this Court emphasized that whether the fact was labeled an "element" or a "sentencing factor" under a state statute was immaterial to whether it was subject to the burden of beyond a reasonable doubt; the proper inquiry was whether that

fact or determination served to increase the penalty beyond the statutory maximum:

> We held that Apprendi's sentence violated his right to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." [*Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000)]. That right attached not only to Apprendi's weapons offense but also to the "hate crime" aggravating circumstance. New Jersey, the Court observed, "threatened Apprendi with certain pains if he unlawfully possessed a weapon and with additional pains if he selected his victims with a purpose to intimidate them because of their race." *Apprendi*, 530 U.S. at 476. "Merely using the label 'sentencing enhancement' to describe the [second act] surely does not provide a principled basis for treating [the two acts] differently." *Id*.
>
> The dispositive question, we said, "is not one of form, but of effect. If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact- no matter how the State labels it- must be found by a jury beyond a reasonable doubt." Id. at 482-483.

Ring v. Arizona, 536 U.S. at 602.

In *Alleyne v. United States*, 133 S.Ct. 2151 (2013), this Court found sentencing factors which exposed defendants to mandatory minimums to be the functional equivalents of elements of the offense to be found by a jury because those findings increased the minimum sentence and heightens the loss of liberty. Then, in 2016, this Court in *Hurst v. Florida*,136 S. Ct. 616 (2016) found that the aggravating factors required to imposed the death penalty were elements to be found by a jury rather than a judge because those findings exposed the defendant to a greater sentence than the statutory maximum of life without parole.

Citing *Hurst v. Florida*, the Florida Supreme Court rendered decisions in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) and in *Perry v. State*, 210 So. 3d 630 (Fla. 2016) holding the jury must find unanimously beyond a reasonable doubt the existence of aggravators, the sufficiency of the aggravators, and whether the aggravators outweigh the mitigators. However, in 2019, the Florida Supreme Court receded from its 2016 decisions in *Hurst* and *Perry* to the extent of holding the finding of aggravating circumstances that made the defendant eligible for the death penalty were not elements which required a unanimous finding by a jury beyond a reasonable doubt in *Rogers v. State,* 285 So. 3d 872, 885-886 (Fla. 2019). The Florida Supreme Court quoted from *Rogers* in its opinion rendered in Petitioner's case as support for holding that the determinations required by § 921.141 to render him eligible for the death penalty are not elements. App. at 19-20.

Clearly, by continuing to hold the determinations required to expose defendants to the death penalty are not elements requiring a jury verdict upon proof beyond a reasonable doubt, the Florida Supreme Court opinion in this case expressly and directly conflicts with this Court's opinions in *Apprendi, Ring, Alleyne,* and *Hurst.*

II. A binding decision from this Court is imperative to resolve the continual conflict between this Court and the Florida Supreme Court as to whether determinations exposing all defendants, especially capital defendants, to increased penalties beyond the statutory maximums are elements to be found by a jury to be proven beyond a reasonable doubt, ensuring the

rights of such defendants to due process under the Fourteenth Amendment.

As discussed in the previous section, the Florida Supreme Court has repeatedly held the determinations of the sufficiency of aggravating factors and the weight of aggravating factors not to be elements of the offense requiring a jury to find them proving beyond a reasonable doubt. *Foster v. State*, 258 So. 3d 1248 (Fla. 2018);*Rogers v. State*, 285 So. 3d 872, 885-886 (Fla. 2019); *State v. Poole*, 297 So. 3d 487 (Fla. 2020); *Bright v. State*, 299 So. 3d 985 (Fla. 2020);*Santiago-Gonzalez v. State*, 301 So. 3d 157 (Fla. 2020). App. at 19-20. These decisions are in express and direct conflict with this Court's decision in *Apprendi, Ring, Alleyne,* and *Hurst* which specifically hold that any fact which exposes a criminal defendant to a penalty beyond the statutory maximum of the offense the jury found her or him guilty of is regarded as an element to be found by the jury beyond a reasonable doubt. The reason for writing out the citations of the recent Florida Supreme Court opinions is to demonstrate the repetition in recent decisions which expressly and directly conflict with this Court on this issue. Thus, this Court must rule on this issue to prevent further conflicting decisions from the Florida Supreme Court to ensure that all defendants prosecuted in Florida are afforded their rights to due process under the Fourteenth Amendment. Should this Court remain silent on this issue, inequality and confusion will remain regarding the imposition of enhanced penalties in Florida due to conflicting decisions as to who makes the determinations required for enhanced penalties and to what burden of proof.

This Court has elaborated on the relationship between the Due Process Clause and the Sixth Amendment regarding the burden of proof of beyond a reasonable doubt, stating:

> It is self-evident [that the] requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is probably guilty, and then leave it up to a judge to determine... whether he is guilty beyond a reasonable doubt. In other words, the jury verdict required by the Sixth Amendment is a jury verdict of guilt beyond a reasonable doubt.

Sullivan v. Louisiana, 508 U.S. 275, 278 (1993). Thus, the Sixth Amendment requirement to a jury trial entitles the defendant to a jury finding of every element of the crime which includes any facts relied upon to increase the penalty. *Hurst v. Florida*, 136 S.Ct. at 621-622, citing *Ring v. Arizona*, 536 U.S. 584, 597 (2002). This Court's concern that defendants be guaranteed a jury verdict of guilt only when all of the facts affecting their loss of liberty have been proven beyond a reasonable doubt has long standing precedent. The Court in *In re Winship*, 397 U.S. 358,363-364 (1970), explained the certitude provided by the standard of reasonable doubt protects the extraordinary interests at stake for criminal defendants by requiring the factfinder to reach a subjective state of certitude as to the elementary determinations at issue:

> The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction... "Where one party has at stake an

> interest of transcending value-as a criminal defendant his liberty- th[e] margin of error is reduced as to him by the process of placing on the other party the burden of... persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt..." To this end, the reasonable doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude."

Id. (internal citations omitted). This explains the Court's decisions in *Apprendi, Ring, Alleyne,* and *Hurst* that any determinations required to raise the penalty beyond the statutory maximum must be found unanimously by a jury beyond a reasonable doubt. This Court recognizes these determinations as functional equivalents of substantive elements of the offense because they are required to be made for the imposition of the enhanced penalty.

By holding the facts of sufficiency and weight of aggravating factors do not require a jury to find they have been proven to a reasonable doubt, the Florida Supreme Court does not treat these determinations as the functional equivalents of the substantive elements of capital murder, and thus, could also hold that any determinations required to enhance a penalty, including mandatory minimums and reclassifications, are not functional equivalents of substantive elements and do not require a jury verdict of proof beyond a reasonable doubt. This conflict causes inequality in not only the imposition of the death penalty, but also the imposition of any enhanced penalty beyond the statutory maximum based on determinations beyond the substantive elements of the offense. Therefore, to provide clarity and equality in the imposition of any enhanced penalty beyond the statutory maximum

requiring determinations beyond the substantive elements, this Court should grant this petition.

III. The lower court's decision in this case is wrongly decided because it deprived Petitioner of his right to due process.

The Florida Supreme Court relied primarily upon its decision in *Rogers* in concluding that the weight is not an element of the offense of capital murder:

> Santiago-Gonzalez argues that the trial court's finding that the aggravating factors outweigh the mitigating circumstances is an "element" that must be found beyond a reasonable doubt. Because the sentencing order did not make an express finding "beyond a reasonable doubt," he maintains that his death sentence is invalid. This argument is without merit.
>
> "[S]ubsequent to our decision in Hurst v. State, [202 So. 3d 40 (Fla. 2016)], we already have receded from the holding that the additional Hurst v. State findings are elements." *State v. Poole*, 45 Fla. L. Weekly S41, S47, —— So.3d ——, ——, 2020 WL 3116597 (Fla. Jan. 23, 2020), clarified, 45 Fla. L. Weekly at S141, —— So.3d ——, 2020 WL 3116598 (Fla. Apr. 2, 2020). In *Rogers v. State*, 285 So. 3d 872, 885-86 (Fla. 2019), we clarified:
>
> > To the extent that in *Perry v. State*, 210 So. 3d 630, 633 (Fla. 2016), we suggested that *Hurst v. State* held that the sufficiency and weight of the aggravating factors and the final recommendation of death are elements that must be determined by the jury beyond a reasonable doubt, we mischaracterized *Hurst v. State,* which did not require that these determinations be made beyond a reasonable doubt. Since *Perry*, in *In re Standard Criminal Jury Instructions in Capital Cases* [244 So. 3d 172 (Fla. 2018] and *Foster [v. State],* 258 So.3d 1248 [(Fla. 2018)], we have implicitly receded from its mischaracterization of *Hurst v. State*. We now do so explicitly. Thus, these

> determinations are not subject to the beyond a reasonable doubt standard of proof, and the trial court did not err in instructing the jury.
>
> The sentencing order sets forth the trial court's conclusions that the State proved four aggravating factors beyond a reasonable doubt, and "the aggravating circumstances in this case far outweigh the mitigating circumstances." There is no deficiency in the trial court's findings.

Santiago-Gonzalez, 301 So. 3d at 177. App. at 19-20.

Rogers was wrongly decided because it explicitly conflicts with this Court's decision, as outlined, in the previous section, which hold that any determinations which are required for the imposition of a penalty beyond the statutory maximum are the functional equivalents of elements which require proof beyond a reasonable doubt by a jury. In this case, Petitioner presented substantial amount of evidence of how the mitigation circumstances from his abusive childhood were directly related to his actions in committing the offense; specifically, testimony from both his sister and brother of daily sexual abuse from various men in his home and from other boys at the juvenile detention facility when he was housed there. In fact, his sister testified to Petitioner complaining of anal pain and seeing his bloody underwear. *Santiago-Gonzalez*, 301 So. 3d at 167. App. at 10. Thus, Petitioner's experience with extensive childhood sexual abuse from males explains his violent reaction when Burns touched Petitioner's buttock in a sexual manner. Petitioner presented evidence of *57* nonstatutory mitigators in addition to the two statutory mitigators including being raised in dangerous area known for gun violence and gang activity; unclean and unsafe living conditions; physical abuse; early exposure

to drug use; lengthy mental health issues; and low intellectual functioning. One of the defense experts, Dr. Stephen Gold, testified Petitioner met all 10 of the categories of Adverse Childhood Experiences (known as ACEs) which is extremely rare. *Id*.

Had the trial court been required to find the sufficiency and weight of the aggravating circumstances beyond a reasonable doubt, it is quite possible the verdict would have been different. By ruling the determinations as to the sufficiency and weight of the aggravating factors necessary for the imposition of the death penalty were not elements to be proven beyond a reasonable doubt, the lower court's decision deprived Petitioner his right to due process under the Fourteenth Amendment.

This Court should grant this petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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