No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARKEITH LOYD – PETITIONER

VS

STATE OF FLORIDA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

DISTRICT COURT STATE OF FLORIDA FIFTH DISTRICT

# PETITION FOR WRIT OF CERTIORARI

MATTHEW J. METZ
PUBLIC DEFENDER

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## QUESTION PRESENTED

Whether this Court should recede from Lockhart v. McCree, 476 U.S. 162 (1986), as part of its ongoing history-based re-evaluation of the Sixth Amendment's guarantee of trial by jury.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## RELATED CASES

The undersigned is aware of no pending cases directly related to this case.

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## TABLE OF AUTHORITIES CITED

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## STATUTES AND CONSTITUTIONAL PROVISIONS



## OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[✓] reported at 311 So.3rd 858 (Fla. 5th DCA 2020); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Circuit Court for Orange County, Florida court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was February 9, 2021
A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment VI to the United States Constitution guarantees, in all criminal prosecutions, "trial, by an impartial jury."

Section 913.13, Florida Statutes (2021), provides "A person who has beliefs which preclude her or him from finding a defendant guilty of an offense punishable by death shall not be qualified as a juror in a capital case."

Section 921.141(1), Florida Statutes (2021), provides in pertinent part "Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge shall summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty."

## INTRODUCTION

Commentators have persuasively criticized the effect that Lockhart v. McCree, 476 U.S. 162 (1986), has had in cases where one of the charges is a capital offense. In those cases, jury selection excludes all those who are unwilling to lay aside moral or religious objections to the death penalty; the result has been to skew the resulting jury pool toward finding guilt in the first phase of trial. The negative commentary has focused on infidelity to the historical antecedents of the Sixth Amendment. This Court, in several cases in recent years, has expressly drawn on those antecedents. As the Petitioner argued in the Florida courts, bifurcating the jury that hears the penalty phase in capital cases from the jury that hears the guilt-or-innocence phase of those cases would solve the serious problem posed by "death-qualification." That solution would also continue to restore understanding of the central role the jury played at the time Sixth Amendment was ratified.

## STATEMENT OF THE CASE

Petitioner Markeith Loyd was indicted in two cases for three capital crimes. The indictment issued in this case charged the premeditated murder of Sade Dixon, as well as the offense of causing the death of her unborn child, in December of 2016. The State sought the death penalty as to both of those charges. The second indictment charged the premeditated murder of a sheriff's deputy in January of 2017. After protracted pretrial litigation, the court permitted the State to prove the January shooting in the trial of the December charges as relevant to consciousness of guilt.

Before trial in this case, the defense moved for an order "requiring the empanelling of separate juries for the guilt and penalty phases so that only penalty phase jurors will be questioned regarding their views on the death penalty." The motion anticipated that the State would seek to "death-qualify" the jury by challenging for cause those potential jurors whose views regarding the death penalty would preclude, or substantially impair, their participation in recommending a sentence of death. Petitioner argued that allowing the death-qualification process during the guilt-or-innocence phase would deny him the right to a trial by an impartial jury guaranteed by the Sixth Amendment to the United States Constitution. The motion set out that declining support for the death penalty has broadened the pool of excludable would-be jurors, and argued that by extension death-qualification suppresses membership on juries of those who are Black like the Petitioner, in that Black jurors are more likely to oppose the death penalty. The

motion also set out that the death-qualification process is known to result in juries that are older and more conservative than non-death-qualified juries, and more prone to convict.

The court denied the motion for separate juries on the record, making no findings. 420 potential jurors appeared, and 190 were released for hardship. The remaining 230 were asked whether they had any religious or personal opposition to the death penalty, and each of those indicating "yes" was questioned out of the hearing of the rest of the venire. 35 potential jurors were released solely because they would not recommend a death penalty regardless of the proof, and an additional five were released for multiple reasons which included inability to recommend a death penalty. One excluded panel member explained that a 2018 change to the catechism of the Catholic Church, to the effect that the death penalty is "inadmissible" in the eyes of the Church in all circumstances, precluded her from making a life-or-death recommendation. She specified that "personally" and "morally" she has no qualms about execution in appropriate cases, and that she would have agreed to participate in a capital trial before 2018, but that she would follow the catechism over the law. When presiding Circuit Judge Leticia Marques excused that individual, she expressed appreciation to "the most interesting and challenging juror I have spoken to today."

The case proceeded to trial, where - as anticipated - the State proved both the events of December 2016 and those of January 2017. The jury returned verdicts of

guilty as charged on all counts, and after the penalty phase it recommended life in prison. The court sentenced Petitioner in accordance with the recommendation.

On appeal to Florida's Fifth District Court of Appeal, Petitioner Loyd acknowledged Lockhart v. McCree, 476 U.S. 162 (1986), noting that the passage of time has seen significant expansion of the pool of jurors who are excludable in capital cases based on their views. He also argued in the appeal that a primary justification for the outcome in Lockhart v. McCree - that repetitive trials would be unfair to the states – is not present here, given the State's insistence on proving the 2017 events in the trial of the 2016 events, as well as proving them in a separate trial that has not yet taken place. The appellate court affirmed Petitioner's convictions and sentences without opinion.

## REASONS FOR GRANTING THE WRIT

Twenty-first century commentators have questioned Lockhart v. McCree in light of more recent cases in which this Court has construed and applied the Sixth Amendment. *E.g.*, G. Ben Cohen and Robert J. Smith, The Death of Death-Qualification, 59 Case Western L. Rev. 87 (2008). The authors of that article challenge this Court to revisit Lockhart v. McCree, arguing that Crawford v. Washington, 541 U.S. 36 (2004) - as well as Jones v. United States, 526 U.S. 227 (1999), Apprendi v. New Jersey, 530 U.S. 466 (2000), and their progeny - establish a rediscovered history-based approach to determining the meaning of the Sixth Amendment. Petitioner agrees, and would have this Court re-examine the

governing caselaw with an eye to the founders' view of the proper scope of the jury's powers.

In Crawford v. Washington, this Court noted that the text of the Sixth Amendment's Confrontation Clause did not resolve the question then before the Court, and therefore consulted "the historical background of the Clause to understand its meaning." 541 U.S. 36, 42-50. In Jones v. United States, the Court observed that the question then before it had not been resolved in the framers' time, but concluded that history points to how the framers would have viewed the underlying conflict over whether a judge or a jury should make particular findings. 526 U.S. at 244-48. Here, the question is whether the right to trial by impartial jury, as understood at the time the Sixth Amendment was ratified, is satisfied by current jury-selection practices.

"Since it was first recognized in Magna Carta, trial by jury has been a prized shield against oppression.... 'Our...ancestors...brought this great privilege...with them, as their birthright and inheritance, as part of that admirable common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power.'" Glasser v. United States, 315 U.S. 60, 84 (1942), *quoting* 2 Story, Const. sec. 1779. Encroachments on the jury's powers were already afoot at the time of our Nation's founding, and those encroachments were vigorously opposed by all factions of the founders. 59 Case Western L. Rev. at 109-14 and n.109, *citing* Federalist No. 83. The authors of the Case Western article note that at common law, a cause challenge based on a venire member's views on sentencing did

not exist. They concluded, after reviewing historical sources, that colonial settlers would have viewed it as tyranny for the government to add, as a qualification for jury service, that the individual must believe in the punishment to be imposed. Id. at 117-19. *Accord* Note, Death Qualification of Jurors as a Violation of the Social Contract, 12 Wash. U. Jurisprudence Rev. 115 (2019). *Cf.* Note, Death Qualification and the Right to Trial by Jury: An Originalist Assessment, 43 Harv. J. L. & Pub. Policy 815 (2020) (acknowledging that death qualification has no analogue at common law but concluding its use is not precluded).

The Case Western article compares this Court's death-qualification cases – Witherspoon v. Illinois, 391 U.S. 510 (1968), Wainwright v. Witt, 469 U.S. 412 (1985), and Lockhart v. McCree - unfavorably with Jones and Crawford. The authors view Witherspoon, Witt, and McCree as divorced from history and as examples of judicial activism. 59 Case Western L. Rev. at 109-12 and 123. The relevant history, in a few nutshells, is as follows: until 1965, empaneling less-than-impartial jurors was treated as a violation of the right to due process of law. *See* Morgan v. Illinois, 504 U.S. 719, 726 (1992), *citing* Irvin v. Dowd, 366 U.S. 717 (1961). With Turner v. Louisiana, 379 U.S. 466 (1965), this Court began to treat such cases as instead involving violations of the Sixth Amendment right to trial by impartial jury. *See* Morgan at 727.

The Sixth Amendment guarantee, as elaborated by the courts, entails both a right to disinterested jurors and a right to a jury drawn from a fair cross-section of society. Taylor v. Louisiana, 419 U.S. 522, 529-31 (1975). The latter aspect of the

Sixth Amendment right has its origins in cases that address the equal protection concerns of Black and female would-be jurors who were excluded from jury service in various jurisdictions in the nineteenth and twentieth centuries. Taylor at 527-29; *see* Glasser v. United States, 315 U.S. 66 (1942), Smith v. Texas, 311 U.S. 128 (1940), and Carter v. Texas, 177 U.S. 442 (1900). Over time, "fair cross section" jurisprudence would come to allow challenges only where a group recognized as "distinctive" is under-represented in jury venires due to systematic government action. Berghuis v. Smith, 559 U.S. 314, 327 (2010). In Lockhart v. McCree, this Court rejected the idea that a sector of society bound together only by like-mindedness could form the requisite "distinctive" group.

Were it not for his inability to show a distinctive group is involved, Petitioner could easily make out a case under the fair-cross-section cases. The other two elements he would need to show are that under-representation of the group in question by systematic government action. The record of jury selection, in this case, shows both of those elements on its face. *See generally* Berghuis v. Smith, 559 U.S. at 328 (process of jury selection can itself establish those factors).

While the "fair cross section" cases were evolving, the practice of holding bifurcated trials in capital cases became entrenched. After this Court announced a moratorium on executions in 1972, it allowed a return to the practice in 1976. *See* Furman v. Georgia, 408 U.S. 238 (1972) and Gregg v. Georgia, 428 U.S. 153 (1976). In Gregg, the Court approved Georgia's statutory plan for reducing arbitrary use of the death penalty; that plan called for bifurcated trials in order to protect the

presumption of innocence, but contemplated a unitary jury, such as Florida now uses, to serve in both the guilt-or-innocence and penalty phases of trial. *See* Gregg at 207-08 (White, J., concurring).

Also while the "fair cross section" cases were evolving, this Court decided Witherspoon and Witt. Witherspoon involved the wholesale exclusion of *all* venire members who harbored *any* reservation about the death penalty; this Court reversed the death sentence imposed in that case, but affirmed the conviction based on the view that social-science evidence provided to the Court failed to establish a predilection among death-qualified juries to convict more readily. In Witt, the Court clarified Witherspoon, holding that jurors who would be substantially impaired in following the court's instructions by their beliefs against capital punishment could not serve where a unitary jury is in use. The process became known as death-qualification, and the affected would-be jurors became known as "Witherspoon-excludables." *See* Morgan v. Illinois, 504 U.S. 719, 733 (1992).

Justice Breyer, dissenting in Glossip v. Gross, 576 U.S. 863 (2015), has acknowledged that research has shown for decades that death qualification skews juries toward guilt. 576 U.S. at 913 (Breyer, J., dissenting, *citing* Susan D. Rozelle, The Principled Executioner: Capital Juries' Bias and the Benefits of True Bifurcation, 38 Ariz. S. L. J. 769 (2006).) There is no shortage of scholarship attesting to that causal relationship. Studies show that death-qualified juries are as much as 44% more likely to find guilt, and are more hostile to the insanity defense, more mistrustful of defense lawyers, and less concerned about the risk of erroneous

convictions. Note, Tribunals Organized to Convict: Searching for a Lesser Evil in the Capital Juror Death-Qualification Process, 2005 B.Y.U. L. Rev. 519, 530-32. Other studies show that death-qualified jurors are more inclined to believe a prosecutor's version of events. Aliza Plener Cover, The Eighth Amendment's Lost Jurors: Death Qualification and the Evolving Standard of Decency, 92 Ind. L. J. 113, 121 (2016). From a statistical standpoint, the data set of death-qualified juries represents a biased sample. Id at 115-16.

As another group of commentators has noted, the practice of death-qualification provides prosecutors with a firewall against changing public opinion. Brandon Garrett *et al.*, Capital Jurors in an Era of Death Penalty Decline, 126 Yale L. J. Forum 417 (2017). As noted above, the record of this case shows that the Catholic Church, when it amended its formal doctrine in 2018, effectively expanded the pool of excludable capital jurors. Declining support for the death penalty has had the same effect over time. 126 Yale L. J. Forum 417, 421. That support, in Black communities, has been measured at a mere 36%. *See* pewresearch.org/fact-tank/2018/06/11.

Ardia McCree, like Petitioner Loyd, was charged with a capital offense but received a prison term after his trial. McCree argued to this Court that his jury had been skewed by the death-qualification process toward a guilty verdict. This Court assumed that the skewing allegation was true, and balanced the parties' interests. McCree's counsel conceded that the State's interest in a unitary jury was legitimate, 476 U.S. at 175-76 and n.15, and this Court denied relief. Later, this Court would

note generally that the states' interest in obtaining juries that can follow a statutory capital scheme is "strong." Uttecht v. Brown, 551 U.S. 1, 9 (2007).

The State's interests, as noted, are unusually weak in this case. The McCree Court emphasized that requiring the prosecution to repeat its proof in successive proceedings could not possibly be fair to the states. 476 U.S. 162, 181. The State of Florida has effectively waived reliance on that interest in this case, by rehearsing the proof of its 2017-based capital charge against Petitioner in the trial that was held in this case on his 2016 capital charges. Generally speaking, administrative convenience "is insufficient justification for diluting the quality of community judgment represented by the jury in criminal trials." Taylor v. Louisiana, 419 U.S. 522, 535 (1975).

Where a single juror who is not in fact Witherspoon-excludable is excused from service, the error is deemed structural because the impartiality of the jury, no less than the impartiality of the presiding judge, goes to the very integrity of the legal system. Gray v. Mississippi, 481 U.S. 648, 668 (1987). *Accord* Thiel v. Southern Pacific Co., 328 U.S. 217, 225 (1946) (where a jury selection process even subtly undermines the jury system, prejudice to the parties need not be shown to obtain reversal). As this Court expressly noted in Gray, criminal defendants have a right not to have their culpability determined by a tribunal organized to convict. 481 U.S. at 668. Lockhart v. McCree precludes enforcement of such a right. In doing so, it stands out as "ahistoric" from the other authorities cited here. *See* 59 Case Western L. Rev. at 90-91.

Professor Susan Rozelle, the author of The Principled Executioner, *supra,* makes a persuasive case for requiring bifurcation of juries in capital cases. She distinguishes between "excludables" and "nullifiers": the latter would never find a defendant charged with a capital crime guilty, given the knowledge that their judgment might eventually result in an execution, while the former could fully participate in a guilt-or-innocence phase, although not a penalty phase. 38 Ariz. S. L. J. at 776. Florida has both an anti-nullifier statute and a general unitary capital jury statute. Sections 913.13, 921.141(1), Florida Statutes (2021). However, where an interest recognized by statute comes into conflict with a constitutional right, the latter prevails. *E.g.,* Gray v. Mississippi, 481 U.S. 648, 663 (1987).

Professor Rozelle's conclusion is that nullifiers may reasonably be excluded at the outset of capital trials, but that the current practice of removing Witherspoon-excludables at the guilt-or-innocence stage cannot be allowed to continue. The Principled Executioner at 793, 796-97. The Petitioner asks this Court to adopt her conclusion, and to recede from Lockhart v. McCree to the extent it precludes recourse to the Sixth Amendment where a capital offense is charged and the jury is death-qualified before trial.

## CONCLUSION

The petition for a writ of certiorari should be granted, Petitioner's convictions and sentence should be reversed, and the case should be remanded for a new trial.

MATTHEW J. METZ,
PUBLIC DEFENDER

_ Nancy Ryan
By: NANCY RYAN,
ASSISTANT PUBLIC DEFENDER
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MARKEITH LOYD – PETITIONER

VS

STATE OF FLORIDA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

DISTRICT COURT STATE OF FLORIDA FIFTH DISTRICT COURT

**PETITION FOR WRIT OF CERTIORARI**

Appendix A Orange County judgment and sentence

In the Circuit Court of the
Ninth Judicial Circuit, in and
for Orange County, Florida

Division: Div 21

Case No: 2016-CF-015738-A-O

State of Florida,
Plaintiff,

vs.

MARKEITH DEMANGZLO LOYD
Defendant.

Date of birth: 10/08/1975

## JUDGMENT

The defendant, MARKEITH DEMANGZLO LOYD, being personally before this Court, represented by TERENCE MICHAEL LENAMON, Esquire , and the State represented by The State of Florida RICHARD BUXMAN/ RICHARD RIDGWAY, FIFTH CIRCUIT COURT,:

| Charges: | | Statute | OBTS | Degree | Plea | Disposition |
|---|---|---|---|---|---|---|
| 1 | FIRST DEGREE MURDER (WITH A FIREARM) | 782.04(1) | | Capital Offense | Deny/ Not Guilty Found Guilty by Petit Jury Sworn | Adjudicated Guilty |
| 2 | KILLING OF AN UNBORN CHILD BY INJURY TO THE MOTHER | 782.04(1)(A)(1) | | Capital Offense | Deny/ Not Guilty Found Guilty by Petit Jury Sworn | Adjudicated Guilty |
| 3 | ATTEMPTED FIRST DEGREE MURDER WITH A FIREARM | 782.04(1)(A)(1) | | Life | Deny/ Not Guilty Found Guilty by Petit Jury Sworn | Adjudicated Guilty |
| 4 | ATTEMPTED FELONY MURDER (ENUMERATED FELONY) (WITH A FIREARM) | 782.051(1) | | Life | Deny/ Not Guilty Found Guilty by Petit Jury Sworn | Adjudicated Guilty |
| 5 | ATTEMPTED FELONY MURDER (ENUMERATED FELONY) (WITH A FIREARM) | 782.051(1) | | Life | Deny/ Not Guilty Found Guilty by Petit Jury Sworn | Adjudicated Guilty |

Filed in Open Court on October 16, 2019

Deputy Clerk in Attendance: Theresa L. Cherie E.
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

State of Florida

v.

Defendant: MARKEITH DEMANGZLO LOYD

Case Number: 2016-CF-015738-A-O

# FINGERPRINTS OF DEFENDANT

| 1. Right Thumb | 2. Right Index | 3. Right Middle | 4. Right Ring | 5. Right Little |
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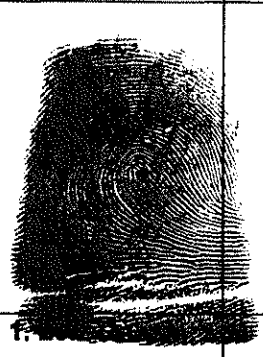
|  |  |  |  |  |
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Fingerprints taken by: _____ Name DLACY

OCSO/5081/CS
Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the MARKEITH DEMANGZLO LOYD, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in **ORANGE** County, Florida, this 16 day of October, 2019

_____
Judge

**Defendant: MARKEITH DEMANGZLO LOYD Case: 2016-CF-015738-A-O Courtroom: 6-D**
**OBTS: 8888888888**

**SENTENCE**
**As to Count: 1**

The defendant being personally before this court, accompanied by the Defendant's attorney of record, TEODORO MARRERO, TERENCE LENAMON, KATE O'SHEA, MELISSA ORTIZ and having been adjudicated guilty herein previously, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

***IT IS THE SENTENCE OF THE COURT THAT:***

The Defendant is hereby committed to the custody of the Department of Corrections.

**TO BE IMPRISONED:**

**For a term of Life**

**JAIL CREDIT**

It is further ordered that the defendant shall be allowed a total of **2 Years 279 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded pursuant to section 912.0017 Florida Statute, on case/count: _____., (Offenses committed before September 30, 1989.)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time serve on case/count_____. (Offenses committed between October 1, 1989 and December 31, 1993)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

___ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

**CONSECUTIVE/CONCURRENT:**

It is further ordered that the sentence imposed for this count shall run Consecutive to each count.

**SENTENCE**
**As to Count: 2**

The defendant being personally before this court, accompanied by the Defendant's attorney of record, TEODORO MARRERO, TERENCE LENAMON, KATE O'SHEA, MELISSA ORTIZ, and having been adjudicated guilty herein previously, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

**IT IS THE SENTENCE OF THE COURT THAT:**

The Defendant is hereby committed to the custody of the Department of Corrections.

**TO BE IMPRISONED:**

**For a term of Life**

**JAIL CREDIT**

It is further ordered that the defendant shall be allowed a total of **2 Years 279 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded pursuant to section 912.0017 Florida Statute, on case/count: _____., (Offenses committed before September 30, 1989.)

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___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

___ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

**CONSECUTIVE/CONCURRENT:**

It is further ordered that the sentence imposed for this count shall run Consecutive to each count.

**SENTENCE**
**As to Count: 3**

The defendant being personally before this court, accompanied by the Defendant's attorney of record, TEODORO MARRERO, TERENCE LENAMON, KATE O'SHEA, MELISSA ORTIZ and having been adjudicated guilty herein previously, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

**IT IS THE SENTENCE OF THE COURT THAT:**

The Defendant is hereby committed to the custody of the Department of Corrections.

**TO BE IMPRISONED:**

**For a term of Life**

**SENTENCE PROVISIONS**

It is further ordered that the 25 Years mandatory minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. (Firearm)

**JAIL CREDIT**

It is further ordered that the defendant shall be allowed a total of **2 Years 279 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded pursuant to section 912.0017 Florida Statute, on case/count: _____., (Offenses committed before September 30, 1989.)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time serve on case/count_____. (Offenses committed between October 1, 1989 and December 31, 1993)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

___ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

**CONSECUTIVE/CONCURRENT:**

It is further ordered that the sentence imposed for this count shall run Consecutive to each count and the firearm minimum mandatory is consecutive to each count.

**SENTENCE**
**As to Count: 4**

The defendant being personally before this court, accompanied by the Defendant's attorney of record, TEODORO MARRERO, TERENCE LENAMON, KATE O'SHEA, MELISSA ORTIZ and having been adjudicated guilty herein previously, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

**IT IS THE SENTENCE OF THE COURT THAT:**

The Defendant is hereby committed to the custody of the Department of Corrections.

**TO BE IMPRISONED:**

**For a term of Life**

**SENTENCE PROVISIONS**

It is further ordered that the 20 Years mandatory minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. (Firearm)

**JAIL CREDIT**

It is further ordered that the defendant shall be allowed a total of **2 Years 279 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded pursuant to section 912.0017 Florida Statute, on case/count: _____., (Offenses committed before September 30, 1989.)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time serve on case/count_____. (Offenses committed between October 1, 1989 and December 31, 1993)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

___ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

**CONSECUTIVE/CONCURRENT:**

It is further ordered that the sentence imposed for this count shall run Consecutive to each count and the firearm minimum mandatory is consecutive to each count.

**SENTENCE**
**As to Count: 5**

The defendant being personally before this court, accompanied by the Defendant's attorney of record, TEODORO MARRERO, TERENCE LENAMON, KATE O'SHEA, MELISSA ORTIZ and having been adjudicated guilty herein previously, and the court having given the defendant an opportunity to be heard

and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,
**IT IS THE SENTENCE OF THE COURT THAT:**

The Defendant is hereby committed to the custody of the Department of Corrections.

**TO BE IMPRISONED:**

**For a term of Life**

**SENTENCE PROVISIONS**

It is further ordered that the 20 Years mandatory minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. (Firearm)

**JAIL CREDIT**

It is further ordered that the defendant shall be allowed a total of **2 Years 279 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded pursuant to section 912.0017 Florida Statute, on case/count: _____., (Offenses committed before September 30, 1989.)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time serve on case/count_____. (Offenses committed between October 1, 1989 and December 31, 1993)

___ It is further ordered that the defendant be allowed ___ days' time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

___ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

**CONSECUTIVE/CONCURRENT:**

It is further ordered that the sentence imposed for this count shall run Consecutive to each count and the firearm minimum mandatory is consecutive to each count.

In the event the above sentence is to the Department of Corrections, the Sheriff of Orange County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the legal right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to assistance of counsel in taking the appeal at the expense of the State on showing of indigence.

Done and Ordered at Orange County, Florida this 23 October 2019

**Honorable Judge:** _____
**Leticia Marques**

Filed in Open Court this 23 October 2019
By: Deputy Clerk in Attendance
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARKEITH LOYD – PETITIONER

VS

STATE OF FLORIDA – RESPONDENT

**PROOF OF SERVICE**

I, NANCY RYAN, do swear or declare that on this 2nd day of June, 2021, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRITE OF CERTIORARI on the Attorney General's Office by electronic service to crimappdab@myfloridalegal.com and mailed to Markeith Loyd, #DOB 10-08-1975, Orange County Jail, P.O. Box 4970, Orlando, FL 32802.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of June, 2021.

*Nancy Ryan*
Nancy Ryan

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARKEITH LOYD – PETITIONER

VS

STATE OF FLORIDA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

DISTRICT COURT STATE OF FLORIDA FIFTH DISTRICT COURT

**PETITION FOR WRIT OF CERTIORARI**

Appendix B Fifth District Court of Appeal opinion

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

MARKEITH LOYD,

Appellant,

v.

Case No. 5D19-3247

STATE OF FLORIDA,

Appellee.

_____/

Decision filed February 9, 2021

Appeal from the Circuit Court
for Orange County,
Leticia J. Marques, Judge.

Matthew J. Metz, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona Beach,
for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., HARRIS and SASSO, JJ., concur.