CASE NO. 21-5356

IN THE SUPREME COURT OF THE UNITED STATES

JOEL DALE WRIGHT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Florida Supreme Court's decision in *Hurst v. State*, 202 So.3d 40 (Fla. 2016), which has since been receded from, made substantive clarifications to Florida's capital-sentencing scheme that must apply to all defendants on collateral review.

2. Whether the Eighth Amendment requires jury sentencing in capital cases.

PARTIES TO THE PROCEEDINGS

Petitioner Joel Dale Wright was the Movant in the trial court and the Appellant in the Florida Supreme Court.

Respondent State of Florida was the Respondent in the trial court and the Appellee in the Florida Supreme Court.

NOTICE OF RELATED CASES

Pursuant to this Court's Rule 14. l(b)(iii), these are related cases:

Underlying Trial:
Circuit Court of Putnam County, Florida
State of Florida v. Joel Dale Wright, Case No. 83-376CF
Judgment Entered: September 23, 1983

Direct Appeal:
Florida Supreme Court, Case No. SC60-64391
Wright v. State, 473 So. 2d 1277 (Fla. 1985)
Judgment Entered: July 3, 1985

Supreme Court of the United States, Case No. 85-5747
Wright v. Florida, 474 U.S. 1094 (1986)
Judgment Entered: January 21, 1986

Initial Post-conviction Proceedings:
Circuit Court of Putnam County, Florida
State of Florida v. Joel Dale Wright, Case No. 83-376CF
Judgment Entered: June 6, 1989

Florida Supreme Court, Case No. SC60-74775
Wright v. State, 581 So. 2d 882 (Fla. 1991)
Remanded to Lower Court for Evidentiary Hearing: May 9, 1991

Initial Postconviction Proceedings on Remand:
Circuit Court of Putnam County, Florida
State of Florida v. Joel Dale Wright, Case No. 83-376CF
Judgment Entered: June 5, 2000

Florida Supreme Court, Case No. SC00-1389
Wright v. State, 857 So. 2d 861 (Fla. 2003)
Judgment Entered: July 3, 2003

State Habeas Proceedings
Florida Supreme Court, Case No. SC0l-2866
Wright v. Sec'y, Fla. Dep't of Corr., 857 So. 2d 861 (Fla. 2003)
Judgment Entered: July 3, 2003
Supreme Court of the United States, Case No. 03-8419
Wright v. Sec'y, Fla. Dep't of Corr., 541 U.S. 961 (2004)
Judgment Entered: March 29, 2004

First Successive Postconviction Proceedings
Circuit Court of Putnam County, Florida
State of Florida v. Joel Dale Wright, Case No. 83-376CF
Judgment Entered: March 23, 2006

Florida Supreme Court, Case No. SC06-2353
Wright v. State, 995 So. 2d 324 (Fla. 2008)
Judgment Entered: September 25, 2008

State Habeas Proceedings
Florida Supreme Court, Case No. SC12-1385
Wright v. Tucker, 2012 WL 11828897 (Fla. 2012)
Judgment Entered: August 10, 2012

Federal Habeas Proceedings
United States District Court for the Middle District of Florida
Wright v. Sec'y, Fla. Dept. of Corr., No. 3:09-cv-99-J-32JBT, 2013 WL 1137478, at *1 (M.D. Fla. Mar. 19, 2013)
Judgment Entered: March 19, 2013

United States Court of Appeals for the Eleventh Circuit, Case No. 13-11832
Wright v. Sec'y, Fla. Dep't of Corr., 761 F.3d 1256 (11th Cir. 2014)
Judgment Entered: August 4, 2014

Supreme Court of the United States, Case No. 14-9020
Wright v. Sec'y, Fla. Dep't of Corr., 135 S. Ct. 2380 (2015)
Judgment Entered: June 1, 2015

Second Successive Postconviction Proceedings
Circuit Court of Putnam County, Florida
State of Florida v. Joel Dale Wright, 83-376CF
Judgment Entered: October 8, 2019

Florida Supreme Court, Case No. SC19-2123
Wright v. State, 312 So.3d 59 (Fla. 2021)
Judgment Entered: January 7, 2021
Rehearing Denied: March 10, 2021

TABLE OF CONTENTS

CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

RULES

OPINION BELOW

Petitioner challenges the Florida Supreme Court's decision to affirm the denial of his motion for postconviction relief; that decision appears as *Wright v. State*, 312 So.3d 59 (Fla. 2021).

The Florida Supreme Court's direct appeal decision appears as *Wright v. State*, 473 So. 2d 1277 (Fla. 1985), *cert. denied*, 474 U.S. 1094 (1986).

JURISDICTION

This Court's jurisdiction to review the final judgment of the Florida Supreme Court is authorized by 28 U.S.C. § 1257. However, this Court should decline to exercise jurisdiction in this case because the Florida Supreme Court's decision does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a court of appeal of the United States, and does not conflict with relevant decisions of this Court. Sup. Ct. R. 10.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent, State of Florida, (hereinafter "State"), accepts as accurate Petitioner's recitation of the Eighth and Fourteenth Amendments of the United States Constitution.

STATEMENT

In late 1972, prompted by this Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972), the Florida legislature enacted statutory reforms intended "to assure that the death penalty will not be imposed in an arbitrary or capricious manner." *Proffitt v. Florida*, 428 U.S. 242, 252–53 (1976) (plurality op.). By giving trial judges "specific and detailed" instructions, *id.* at 253, these reforms sought to ensure that courts presiding over capital cases would conduct "an informed, focused, guided, and objective inquiry" in determining whether a defendant convicted of first-degree murder should be sentenced to death. *Id.* at 259.

Over the next few decades, this Court repeatedly reviewed and upheld the constitutionality of Florida's capital-sentencing scheme. *See, e.g., Hildwin v. Florida*, 490 U.S. 638 (1989); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Barclay v. Florida*, 463 U.S. 939 (1983) (plurality op.); *Dobbert v. Florida*, 432 U.S. 282 (1977). It concluded that Florida's hybrid regime, in which juries issued advisory verdicts but a trial judge ultimately found sentencing facts and issued a sentence, was not just constitutionally sound—it afforded capital defendants the benefits flowing from jury involvement while still retaining the protections associated with judicial sentencing. *See, e.g., Proffitt*, 428 U.S. at 252 (plurality op.).

That was the state of the law—advisory juries with judicial sentencing—when Petitioner committed, was convicted of, and was sentenced for, his crimes.

Since then, much has changed in how Florida implements capital punishment. The changes were sparked by *Apprendi v. New Jersey*, where this Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a

crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt," even if a state characterizes the facts as "sentencing factors." 530 U.S. 466, 490–94 (2000). *Ring v. Arizona* extended *Apprendi* to findings on the "aggravating factors" necessary to impose a death sentence under Arizona's capital-sentencing scheme, holding that "the Sixth Amendment requires that [the factors] be found by a jury" because they "operate as 'the functional equivalent of an element of a greater offense.'" 536 U.S. 584, 609 (2002) (quoting *Apprendi*, 530 U.S. at 494 n.19).

Nonetheless, neither *Apprendi* nor *Ring* overruled this Court's precedents approving the validity of Florida's hybrid sentencing procedure. *See id.* (holding that Arizona's capital-sentencing scheme was unconstitutional because it allowed a "judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty"); *Knight v. Fla. Dep't of Corr.*, 936 F.3d 1322, 1335 (11th Cir. 2019) ("*Ring* did not dictate the Supreme Court's later invalidation of Florida's death penalty sentencing scheme in *Hurst*."); *Evans v. Sec'y, Fla. Dep't of Corr.*, 699 F.3d 1249, 1261–62 (11th Cir. 2012) (concluding that Florida's capital-sentencing scheme survived *Ring*).

That change did not come until *Hurst v. Florida*, 577 U.S. 92 (2016) (*Hurst I*), when this Court held that Florida's capital-sentencing scheme violated the Sixth Amendment in light of *Ring*. Under Florida law at the time, the maximum sentence a capital felon could receive based on a conviction alone was life imprisonment. *Hurst I*, 577 U.S. at 95. Capital punishment was authorized "only if an additional

sentencing proceeding 'result[ed] in findings by the court that such person shall be punished by death.'" *Id.* (quoting Fla. Stat. § 775.082(1) (2010)). At that additional sentencing proceeding, a jury would render an advisory verdict. That verdict would recommend for or against the death penalty. In making that recommendation, the jury was instructed to consider whether sufficient aggravating factors existed, whether mitigating circumstances existed that outweigh the aggravators, and, based on those considerations, whether death was an appropriate sentence. Fla. Stat. § 921.141(2)(a)(c) (2010).

This Court struck down that scheme. Observing that it had previously declared Arizona's capital sentencing scheme invalid because the jury there did not make the "required finding of an aggravated circumstance"—a finding which exposed a defendant to "a greater punishment than that authorized by the jury's guilty verdict"—the Court held that this criticism "applie[d] equally to Florida's." *Hurst I,* 577 U.S. at 98 (quoting *Ring,* 536 U.S. at 604). "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, [was] therefore unconstitutional." *Id.* at 103. This Court remanded to the Florida Supreme Court to determine whether the error was harmless. *Id.* at 102–03.

On remand, the Florida Supreme Court addressed the scope of *Hurst I. See Hurst v. State*, 202 So.3d 40 (Fla. 2016) (Hurst II). Though by its terms *Hurst I* faulted Florida's scheme only for permitting a judge "to find the existence of an aggravating circumstance," 577 U.S. at 103, the Florida Supreme Court, relying not only on the Sixth Amendment but also the Eighth Amendment and the Florida

Constitution, extended that holding to several additional findings relevant to the ultimate sentencing determination. *Hurst II*, 202 So.3d at 50–63. It announced the following rule:

> [B]efore the trial judge may consider imposing a sentence of death, the jury in a capital case must [1] unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, [2] unanimously find that the aggravating factors are sufficient to impose death, [3] unanimously find that the aggravating factors outweigh the mitigating circumstances, and [4] unanimously recommend a sentence of death.

Id. at 57. As the court explained, "[t]hese same requirements" had always existed in Florida law; they were simply previously "consigned to the trial judge." *Id.* at 53.

Justice Canady, joined by Justice Polston, dissented. As he explained, *Hurst I* required only "that an aggravating circumstance be found by the jury." *Id.* at 77 (Canady, J., dissenting). Justice Canady would have held that once a jury finds an aggravator beyond a reasonable doubt, the Sixth Amendment is satisfied, even if a judge later weighs that aggravator against mitigators and imposes a death sentence. *Id.* at 82.

Four years later, Justice Canady's dissent was adopted by a majority of the Florida Supreme Court in *State v. Poole*. 297 So.3d 487 (Fla. 2020). There, the court receded from *Hurst II* "to the extent its holding requires anything more than the jury to find an aggravating circumstance—what *Hurst* [*I*] requires." *Id.* at 501. The court concluded that it had "clearly erred" in *Hurst II* "by requiring that the jury make any finding beyond the section 921.141(3)(a) eligibility finding of one or more statutory aggravating circumstances." *Id.* at 503.

In between *Hurst II* and *Poole*, Petitioner filed a state court petition for post-conviction review, arguing that his capital sentence was erroneous under *Hurst I* and *Hurst II*. The Florida Supreme Court rejected the argument.

FACTS AND PROCEDURAL HISTORY

This capital case is before this Court upon the affirmance of the denial of a successive Rule 3.851, Fla. R. Crim. P. post-conviction relief motion affirmed by the Florida Supreme Court in *Wright v. State,* 312 So.3d 59 (Fla. 2021).

Joel Dale Wright ("Wright"), is in state custody and under a sentence of death pursuant to a valid judgment and sentence. *Wright v. State*, 473 So. 2d 1277 (Fla. 1985), *cert. denied*, 474 U.S. 1094 (1986). As described by the Florida Supreme Court on direct appeal:

> The facts reflect that the body of a 75–year–old woman was found in the bedroom of her home on February 6, 1983. The victim was discovered by her brother, who testified that he became concerned when she failed to respond to his knock on the door. Finding all the doors to her home locked, he entered through an open window at the rear of the house and subsequently found her body. Medical testimony established that the victim died between the evening of February 5 and the morning of February 6 as a result of multiple stab wounds to the neck and face, and that a vaginal laceration could have contributed to the victim's death....
>
> The state's primary witness, Charles Westberry, testified that shortly after daylight on the morning of February 6, appellant came to Westberry's trailer and confessed to him that he had killed the victim; that appellant told him he entered the victim's house through a back window to take money from her purse and, as appellant wiped his fingerprints off the purse, he saw the victim in the hallway and cut her throat; and that appellant stated he killed the victim because she recognized him and he did not want to go back to prison. Westberry further stated that appellant counted out approximately $290 he said he had taken from the victim's home and that appellant asked Westberry to tell the police that appellant had spent the night of February 5 at Westberry's trailer. When Westberry related appellant's confession to his wife several weeks later, she notified the police....

> In his defense, appellant denied involvement in the murder and introduced testimony that, between 5:00 and 6:00 p.m. on February 5, a friend had dropped him off at his parents' home, which neighbored the victim's, and that he left at 8:00 p.m. to attend a party at his 3 employer's house. Testifying in his own behalf, appellant stated that he returned to his parents' home, where he resided, at approximately 1:00 a.m. on February 6, but was unable to get into the house because his parents had locked him out. Appellant testified that he then walked by way of Highway 19 to Westberry's trailer, where he spent the night....

The jury found appellant guilty as charged and recommended death by a vote of nine to three. In sentencing Wright to death, the trial court found the following aggravators: (1) the murder took place after the defendant committed rape and burglary; (2) the murder was committed for the purpose of avoiding or preventing a lawful arrest; (3) the murder was especially heinous, atrocious, and cruel; (4) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. The trial court found no mitigating circumstances. *Wright,* 473 So. 2d at 1278–79.

Following the denial of certiorari on January 21, 1986, Wright's case became final. *Wright v. Florida*, 474 U.S. 1094 (1986). Wright then sought collateral relief in state court raising eighteen claims. *Wright v. State*, 581 So. 2d 882 (Fla. 1991). The trial court summarily denied the motion, but on appeal, the Florida Supreme Court reversed and remanded for an evidentiary hearing on Wright's claim that the public defender's service as a special deputy affected his attorney's ability to provide effective assistance. *Id.* at 887.

On remand for the evidentiary hearing, Wright amended his motion for postconviction relief and added a claim that he was entitled to relief under *Ring v.*

Arizona, 536 U.S. 584 (2002). *Wright v. State*, 857 So. 2d 861, 865 (Fla. 2003). After an evidentiary hearing, the trial court denied Wright relief. *Id.* On appeal, the Florida Supreme Court affirmed the trial court's order denying Wright relief, simultaneously denied Wright's petition for habeas corpus, and expressly found that *Ring* did not apply to Wright. *Id.* at 877-78. Wright's petition for certiorari review was denied. *Wright v. Crosby*, 541 U.S. 961 (2004).

Wright filed another motion for postconviction relief, claiming newly discovered evidence, which was denied by the trial court. *Wright v. State*, 995 So. 2d 324, 326 (Fla. 2008). The Florida Supreme Court affirmed the trial court's order denying Wright's motion for postconviction relief. *Id.* at 328. Wright filed a petition for habeas corpus in the United States District Court, and the Court denied the petition. *Wright v. Secretary*, Florida Dept. of Corrections, No. 3:09-cv-99-J-32JBT, 2013 WL 1137478 at *33 (M.D. Fla. Mar. 19, 2013). Wright appealed the denial of the petition, and the United States Court of Appeals for the Eleventh Circuit affirmed the district court's order. *Wright v. Secretary*, Florida Dept. of Corrections, 761 F. 3d 1256, 1285 (11th Cir. 2014), *cert. denied*, *Wright v. Jones*, 135 S. Ct. 2380 (2015).

On January 12, 2017, Wright filed his Second Successive 3.851 Motion to Vacate arising from the change in Florida law that followed in the wake of *Hurst v. Florida*, 577 U.S. 92 (2016) ("*Hurst I*"), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016) ("*Hurst II*"). On October 8, 2019, the trial court entered an order denying relief summarily and Wright appealed.

There he asserted that *Hurst II* created a new crime of capital murder requiring that *Hurst II* be applied retroactively to all capital defendants under the Eighth Amendment and due process. Also, he claimed that the Florida Supreme Court's reliance upon *Witt v. State,* 387 So. 2d 922 (Fla. 1980), conflicts with *Bunkley v. Florida,* 538 U.S. 835 (2003), which he asserted had addressed the treatment of those defendants following a state court's redefining of a necessary element of a crime. Wright also took issue with the fact that some capital defendants who had committed their murders before Wright committed his received *Hurst II* relief whereas Wright did not. Finally, he argued that the Due Process Clause precludes the Florida Supreme Court's decision in *State v. Poole* from retroactively changing Florida's substantive law to his detriment because Poole reflects a judicial interpretation of a criminal statute that was both "unexpected and indefensible." The Florida Supreme Court affirmed the denial of post-conviction relief and with respect to the *Hurst v. State* claim stated:

> The crux of Wright's argument on appeal is that this Court's decision in *Hurst v. State* established a new offense—capital first-degree murder—and that the jury sentencing determinations described in *Hurst* are "elements" of that new offense. From that assertion, Wright insists that *Hurst* created a substantive rule of law that dates back to Florida's original capital sentencing statute, thereby requiring Wright's death sentence to be vacated on the ground that certain elements of his crime were never found by a jury. We rejected a similar argument in *Foster v. State*, 258 So.3d 1248, 1251 (Fla. 2018). As we explained in *Foster*, there is no independent crime of "capital first-degree murder"; the crime of first-degree murder is, by definition, a capital crime, and *Hurst v. State* did not change the elements of that crime. *Id.* at 1251-52 (holding that when a jury makes *Hurst* determinations, "it only does so after a jury has unanimously convicted the defendant of the capital crime of first-degree murder").

> Moreover, "[w]e have consistently applied our decision in *Asay v. State*, 210 So.3d 1 (Fla. 2016)], denying the retroactive application of *Hurst v. Florida* as interpreted in *Hurst v. State* to defendants whose death sentences were final when the Supreme Court decided *Ring v. Arizona*, 536 U.S. 584 (2002)." *Hitchcock v. State*, 226 So.3d 216, 217 (Fla. 2017). Wright echoes other pre-*Ring* defendants who have advanced myriad legal theories that, in the end, turn on pleas for a retroactive application of *Hurst*. But this Court has rejected such arguments, however styled. *See, e.g., Lambrix v. State*, 227 So.3d 112, 113 (Fla. 2017) (rejecting arguments based on "the Eighth Amendment," "denial of due process and equal protection," and "a substantive right based on the legislative passage of chapter 2017-1, Laws of Florida").
>
> Finally, Wright offers an extensive critique of this Court's decision in *State v. Poole*, 297 So.3d 487 (Fla. 2020), where we partially receded from *Hurst*. We need not address *Poole* here, however, because Wright's claims fail even under our pre-*Poole* jurisprudence on *Hurst* and retroactivity.

Wright v. State, 312 So.3d 59 (Fla. 2021).

Similarly, this Court had already determined that *Ring* does not apply retroactively as a matter of federal law. *See Schriro v. Summerlin*, 542 U.S. 348, 358 (2004). Consistent with *Schriro*, this Court has confirmed that "*Ring* and *Hurst* do not apply retroactively on collateral review." *McKinney v. Arizona*, 140 S. Ct. 702, 708 (2020). Wright's petition for certiorari followed.

REASONS FOR DENYING THE WRIT

I. Petitioner's claim that Hurst II should apply to him does not warrant review.

In his first question presented, Petitioner argues that the Florida Supreme Court's denial of a new penalty phase trial, under *Hurst v. Florida*, 577 U.S. 92 (2016) ("*Hurst I*"), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016) ("*Hurst II*"), violates the due process clause of the U.S. Constitution. He contends that in *Hurst II* the Florida Supreme Court conducted a statutory interpretation of Florida's death-penalty

statute which resulted in the necessity of the State to prove new "elements " of the offense of capital murder, a higher degree of murder than first-degree murder. In his estimation, that was a substantive change in the law which, under *Fiore v. White*, 531 U.S. 225 (2001), must reflect back to the enactment of the statute; since no such findings or "elements" were found in his trial, he is entitled to a new penalty phase. And, even though the Florida Supreme Court receded from *Hurst II* in *Poole*, Petitioner asserts that *Hurst II*'s now erroneous description of the law should apply to his case to avoid due process problems.

Petitioner's entire analysis of *Hurst II* is incorrect, and his claim is without merit. Further, the decision below rests upon the Florida Supreme Court's interpretation of state law. This Court has consistently rejected certiorari review based upon the Florida Supreme Court's application of *Hurst* in Florida. [1] Petitioner presents no persuasive or compelling reasons to accept review of his case.

Petitioner essentially presents this Court with a question of state, not federal law. Of course, this Court does not review claims that are based exclusively upon state law. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) (explaining that respect for the "independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground" for the decision). The reason is fundamental: "Since the state-law determination is sufficient to sustain the decree, any opinion of

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[1] *See*, e.g., *Lamarca v. Florida*, No. 18-5648 (Oct. 29, 2018) (denying petition that argued that *Hurst II* imposed new substantive elements); *Geralds v. Florida*, No. 18-5376 (Oct. 9, 2018) (same).

this Court on the federal question would be purely advisory." *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (citing *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945)). Since the decision below was based upon an interpretation of state law by the highest court in Florida, this Court should decline certiorari review.

Petitioner's theory for relief necessarily raises a state-law issue about what *Hurst II*, a state court decision, purportedly found to be the "elements" in a state statute. "States possess primary authority for defining ... criminal law." *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993) (quoting *Engle v. Isaac*, 456 U.S. 107, 128 (1982)). Therefore, defining the elements of a crime is "essentially a question of state law." *Hankerson v. North Carolina*, 432 U.S. 233, 244-45 (1977). However, the Florida Supreme Court has stated that *Hurst II* did not create new substantive elements to a higher degree of murder, contrary to Petitioner's stance:

> [W]e explained in *Foster v. State,* 258 So.3d 1248, 1252 (Fla. 2018), the *Hurst* penalty phase findings are not elements of the capital felony of first-degree murder. Rather, they are findings required of a jury: (1) before the court can impose the death penalty for first-degree murder, and (2) only after a conviction or adjudication of guilt for first-degree murder has occurred.

Rogers v. State, 285 So.3d 872, 885 (Fla. 2019) (emphasis omitted), *cert. denied sub nom. Rogers v. Florida,* 141 S. Ct. 284, 208 L. Ed. 2d 43 (2020). *Hurst II* did not say anything new about the substantive requirements needed to impose a capital sentence.

Petitioner cannot argue that he ultimately brings a due process claim and, therefore, raises a federal issue. After all, the determination that *Hurst II* made no alteration to Florida's capital-sentencing statute conclusively resolves

Petitioner's due process claim absent any federal analysis. *Cf. Graves v. Ault,* 614 F.3d 501, 512 (8th Cir. 2010) ("[W]e are bound by the Supreme Court of Iowa's holding that a change, rather than a mere clarification, occurred."). Indeed, when this Court has confronted claims that a prisoner's due process rights were violated because a subsequent state court decision clarified that the conduct the prisoner was convicted of was simply not criminal, this Court has certified questions about the content of state law to the relevant state supreme court. *E.g., Fiore*, 531 U.S. at 228; *see also Bunkley*, 538 U.S. at 840-41 (remanding to state court to determine when change in law occurred). Implicit in that certification is the view that whether a state law has been altered is itself a state-law question. And here, when that state-law answer fully resolves the case, there is no federal basis for review. *E.g., Gladney v. Pollard*, 799 F.3d 889, 898 (7th Cir. 2015) (finding "no federal constitutional issue" and only "perceived error of state law" when habeas petitioner argued that a new state-law statutory interpretation had to be applied to him, but the state courts found that the petitioner had been convicted under the proper law at the time of his trial). In short, the opinion below rests on state law all the way down and, thus, this Court should deny certiorari review.

Further, Petitioner does not even try to identify any traditional basis for certiorari under Supreme Court Rule 10. He points to no split among the lower courts, no conflicts with this Court's decisions, and no issues of great federal importance. Petitioner's claim turns on how Florida interprets its own death-penalty statute. No other state would have reason to interpret Florida's statute, which explains why no split among state courts of last resort exists. Nor is there a

split with this Court's decisions or with a lower federal court because "[s]tate courts ... alone can define and interpret state law," and thus, the Florida Supreme Court's interpretation of its own capital-sentencing statute is the last word. *Schlesinger v. Councilman*, 420 U.S. 738, 755 (1975). Finally, no split on any constitutional question exists because, to avoid adverse retroactivity rulings, Petitioner abandons any direct constitutional theory. In short, Petitioner advances no split because the legal issue he presents cannot give rise to one.

The Florida Supreme Court's decision denying the *Hurst* claim was correct. Petitioner wants *Hurst II* requirements to benefit him even though his sentence was final well before that case was decided. The predicate question of retroactivity has already been answered by both this Court and the Florida Supreme Court. *McKinney v. Arizona*, 140 S. Ct. 702, 708 (2020) ("*Ring* and *Hurst* do not apply retroactively on collateral review.") (citing *Schriro v. Summerlin*, 542 U.S. 348, 358, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004)); *Hitchcock v. State*, 226 So.3d 216, 217 (Fla. 2017) (We have consistently denied retroactive application of *Hurst* "to defendants whose death sentences were final when the Supreme Court decided *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002).") (citations omitted). Petitioner avoids arguing that either *Hurst I* or *Hurst II* is retroactive as a matter of federal or state law. Instead, he addresses his claim as a due process one, arguing incorrectly that *Hurst II* established new elements required for a death sentence and was thus a substantive ruling on what Florida's death-penalty statute had always meant. However, *Hurst II* did not change Florida substantive law, it

simply changed procedure, and Petitioner presents no due process argument for why a procedural change should apply retroactively to his case.

Hurst II did not change the substantive law in Florida's death penalty scheme. The Florida Supreme Court in *Foster* specifically stated that there was no new capital-murder offense with additional elements; rather, *Hurst II* established necessary jury findings for sentencing. *Foster*, 258 So.3d at 1251-52; *Thompson v. State,* 261 So.3d 1255 (Fla. 2019); *Rogers*, 285 So.3d at 885; *Duckett v. State*, 260 So.3d 230, 231 (Fla. 2018); *Finney v. State*, 260 So.3d 231 (Fla. 2018). For example, in *Rivera v. State*, 260 So.3d 920 (Fla. 2018), the defendant argued, as Petitioner does here that, under *Fiore*, *Hurst II* should have applied to his case because it announced a substantive clarification of Florida law. The Florida Supreme Court rejected the claim because *Hurst* did not announce new elements needed to establish a capital crime. *Id.* at 928. That determination is entitled to conclusive weight because "state courts are the final arbiters of state law." *Agan v. Vaughn*, 119 F.3d 1538, 1549 (11th Cir. 1997).

Hurst II itself makes clear that it neither clarified nor changed the substance of Florida law. It only transferred the necessary findings from the judge to the jury. *Hurst II*, 202 So.3d at 53. *Hurst II* involved no new statutory requirements; the decision's focus was on "the mandate of [*Hurst I*] and on Florida's constitutional right to jury trial, considered in conjunction with [Florida's] precedent concerning the requirement of jury unanimity as to the elements of a criminal offense." *Id.* at 44. The decision was grounded in federal and state constitutional law, not the statutory text. *Id.* at 59 (requiring jury unanimity under the Sixth and Eighth

Amendments and the Florida right to a jury trial); *Id.* at 69 (finding a "Sixth Amendment right to a jury determination of every critical finding necessary for imposition of the death sentence"). *Hurst II* did not purport to reach a new interpretation of Florida's capital-sentencing law.

Further, every finding required by *Hurst II* was also found in Petitioner's pre-*Hurst II* case; the findings were just made by a judge, not a jury. The trial judge found four aggravators in this case. Those aggravators were sufficient because longstanding Florida law had held that a single aggravator provides a sufficient ground for death eligibility. *E.g., Poole*, 297 So.3d at 502-03; *Miller v. State*, 42 So.3d 204, 219 (Fla. 2010); *State v. Dixon*, 283 So. 2d 1, 9 (Fla. 1973). Thus, as a matter of substance, every finding required after *Hurst II* was found in Petitioner's case.

In any case, Petitioner's sentence is undeniably proper under current Florida law (as announced in *Poole*, 297 So.3d 487, *reh'g denied, clarification granted, State v. Poole*, SC18-245, 2020 WL 3116598 (Fla. Apr. 2, 2020), and c*ert. denied sub nom. Poole v. Florida*, 141 S. Ct. 1051 (2021). Even if Petitioner could have benefitted from *Hurst II*, he would still not be entitled to relief since the Florida Supreme Court has receded from *Hurst II*, "to the extent its holding requires anything more than the jury to find an aggravating circumstance." *Poole*, 297 So.3d at 501. There was no *Hurst/Poole* error. *See McKinney*, 140 S. Ct. at 705 (holding that "a defendant convicted of murder is eligible for a death sentence if at least one aggravating circumstance is found"); *Poole*, 297 So.3d at 508 (jury's conviction of *Poole* for qualifying contemporaneous violent felonies "satisfied the requirement that a jury unanimously find a statutory aggravating circumstance beyond a

reasonable doubt"). In Petitioner's case, the jury made the required finding of an aggravating (or "eligibility") factor (a prior violent felony based on the contemporaneous conviction in that the murder was committed in the course of a sexual battery), and that is all that either the United States or Florida Constitutions require.

In short, Petitioner's view that *Hurst II* found new substantive elements finds no support in the opinion itself, subsequent Florida law, or this Court's cases. Instead, *Hurst II* procedurally changed who was required to make certain findings, not the content of those findings. With only a procedural change, Petitioner cannot even get to the first step of a due process analysis (whether *Hurst II* changed or clarified Florida substantive law) and, therefore, cannot state a viable due process claim.

II. The Eighth Amendment Does Not Require Jury Sentencing

Petitioner asks this Court to address whether the Eighth Amendment requires jury sentencing in capital cases. Just recently, however, this Court clearly answered that question in the negative. *See McKinney*, 140 S. Ct. at 707 ("Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible. But importantly, in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstance ultimate sentencing

decision within the relevant sentencing range."). Therefore, this Court need not revisit it.[2]

The Constitution provides a right to trial by jury, not to sentencing by jury. *See Ring*, 536 U.S. at 612 (Scalia, J., concurring) ("[T]oday's judgment has nothing to do with jury sentencing. What today's decision says is that the jury must find the existence of the fact that an aggravating factor existed.") (emphasis in original); *Harris v. Alabama*, 513 U.S. 504, 515 (1995) (holding that the Constitution does not prohibit the trial judge from "impos[ing] a capital sentence").

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[2] In Florida, the jury actively participates in both the eligibility and selection phases of the capital sentencing process. While the finding of at least one aggravating factor beyond a reasonable doubt concludes the jury's role in the eligibility phase, it marks the beginning of the jury's role in the selection phase. *See Poole,* 297 So.3d at 502. In performing its role during the selection phase, the jury must consider: "[w]hether sufficient aggravating factors exist"; and, "[w]hether aggravating factors exist which outweigh the mitigating circumstances found to exist." Fla. Stat. § 921.141(2)(b)2.a-b. After considering whether sufficient aggravating factors exist and whether the aggravating factors outweigh the mitigating circumstances, the jury must recommend to the trial court "whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death." Fla. Stat. §921.141(2)(b)2. If the jury recommends death, then the trial court may impose either a death sentence or a sentence of life imprisonment without the possibility of parole. Fla. Stat. § 921.141(3)(a)2. If, however, the jury recommends a sentence of life without the possibility of parole, then the trial court can only impose a life sentence. Fla. Stat.§ 921.141(3)(a)l.

CONCLUSION

Based on the foregoing, Respondents respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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