IN THE
SUPREME COURT OF THE UNITED STATES

WAYNE C. DOTY,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES STATE OF FLORIDA

Appendix A

313 So.3d 573
Supreme Court of Florida.

Wayne C. DOTY, Appellant,
v.
STATE of Florida, Appellee.

No. SC18-973
|
February 13, 2020

Synopsis

Background: Defendant was sentenced to death in the Circuit Court, 8th Judicial Circuit, Bradford County, William E. Davis, J., for the murder of his fellow inmate after his conviction and original sentence were affirmed on direct appeal, 170 So.3d 731, but his sentence was vacated due to lack of unanimous jury recommendation of death. Defendant appealed.

Holdings: The Supreme Court held that:

trial court's denial of defendant's request to include a nonbinding recommendation of placement in sentencing order was not the product of a mistaken impression of law, and

death sentence was proportionate.

Affirmed.

Labarga, J., filed opinion concurring in part and dissenting in part.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

***574** An Appeal from the Circuit Court in and for Bradford County, William E. Davis, Judge - Case No. 042011CF000498CFAXMX

Attorneys and Law Firms

Andy Thomas, Public Defender, and Barbara J. Busharis, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida, for Appellant

Ashley B. Moody, Attorney General, and Jennifer A. Donahue, Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

In this direct appeal of Wayne C. Doty's second sentencing proceeding, Doty argues that the trial court erred in giving a jury instruction that did not require the determinations referred to in section 921.141(2)(b)2., Florida Statutes (2018), to be proved beyond a reasonable doubt. Doty also argues that the trial court erred by denying his request to include a nonbinding sentencing recommendation in the sentencing order. In addition to addressing Doty's claims, we have an independent obligation to determine if the sentence of death is proportionate. *Hampton v. State*, 103 So. 3d 98, 120 (Fla. 2012). We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons set forth below, we affirm Doty's death sentence.

FACTS AND PROCEDURAL BACKGROUND

Doty was convicted and sentenced to death for the murder of Xavier Rodriguez, a fellow prison inmate; we affirmed Doty's conviction and sentence on direct appeal. *Doty v. State*, 170 So. 3d 731, 734 (Fla. 2015). However, because the jury did not unanimously recommend death, the trial court later vacated Doty's sentence pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). At the conclusion of Doty's second sentencing proceeding, the jury voted unanimously for the death sentence. The facts of the murder were set forth in our decision on Doty's first direct appeal.

> The evidence showed that Doty was, at the time of the murder, serving a life sentence for the shooting death of his former employer. Doty was transferred to Florida State Prison (FSP) and was assigned to the "K wing," working as a runner. Each wing at the prison had four runners, who worked in pairs and assisted in numerous duties, including distributing meals to the other prisoners and cleaning common areas. In return, the runners were given certain privileges. Doty's partner as a runner was [William]

Wells, who assisted in the murder of Rodriguez, another runner on the K wing.

Doty began planning the murder after the victim, Rodriguez, called Doty names and stole some tobacco from Doty approximately two weeks prior to the incident. In exchange for tobacco, Doty convinced another inmate to make him a knife that he could use to murder Rodriguez. On the evening of May 17, ***575** 2011, Doty obtained the homemade knife, which was hidden in a newspaper, when he assisted in picking up inmate food trays after dinner. Doty deposited the knife into a trashcan, which he later retrieved and brought to the third-floor interview room that the runners were permitted to use. Doty then placed the weapon in the duct work there so he could easily retrieve it.

That evening, Doty and Wells carefully watched when the officers made their rounds to determine the best time to kill Rodriguez. After convincing Rodriguez to meet them in the third-floor interview room, Doty and Wells tricked Rodriguez into letting them bind his hands by betting him some tobacco that he could not get out of "Coast Guard handcuffs." After his hands were bound, Doty approached Rodriguez from behind and placed him in a rear chokehold. At first, Rodriguez thought it was a joke but, as Doty explained in his confession, "Once I really got that chokehold locked down, he knew the game was over." After Doty felt Rodriguez "go slack," Doty let Rodriguez's body drop to the floor, and Doty later commented that the body made a "hollow thud" as it hit the floor.

Wells ensured that nobody else entered the room, while Doty pulled the body around the desk and began to stab Rodriguez with the homemade knife. Although Doty admitted that he was hoping to pull out Rodriguez's heart "to make sure he was really dead," the knife was too dull and did not work for that task. Doty and Wells then tied a ligature around Rodriguez's neck, smoked a cigarette, took showers, and, after they were sure that Rodriguez was really dead, called a sergeant working at the prison and confessed to the crime.

Doty, 170 So. 3d at 734.

At the sentencing proceeding held after Doty's initial sentence was vacated, the State attempted to prove three aggravating factors. First, that Doty was currently serving a sentence of imprisonment for a prior felony conviction. *See* § 921.141(6)(a), Fla. Stat. Second, that Doty was previously convicted of a capital felony. *See* § 921.141(6)(b). Third, that Doty murdered Rodriguez in a cold, calculated, and premeditated manner without pretense of moral or legal justification. *See* § 921.141(6)(i). As to the first two aggravators, the State and Doty stipulated that Doty had been convicted of first-degree murder for killing his former employer, and that he was imprisoned at Florida State Prison when Rodriguez was killed. As to the third aggravator, two prison employees testified that Doty confessed to them that he had been planning Rodriguez's murder for weeks. According to the State, their testimony demonstrated that Doty acted in a cold, calculated, and premeditated manner. The State also read victim impact testimony in the form of testimony given by the victim's mother at the first trial.

Doty called several witnesses to establish nonstatutory mitigating factors. The witnesses spoke of Doty's experiences in prison, his cooperation with the investigation, his mental health issues, and his troubled upbringing. A fellow inmate testified about the importance of respect in prison, stating that violent behavior is accepted and that murder can be a survival mechanism. He said that Doty was respectful and never manipulated other inmates. A correctional officer testified that Doty was a "good worker" who took responsibility for Rodriguez's murder, helped authorities resolve the case, and even offered suggestions to improve their security measures. Dr. Harry Krop, a psychologist, testified that he diagnosed Doty with obsessive compulsive personality disorder, and he ***576** described Doty's adverse childhood experiences—specifically, that Doty was neglected and abandoned, lacked a male role model, and was subjected to domestic violence.

Doty's mother testified that Doty's father took Doty and left when Doty was just two years old. Doty's former stepmother testified that Doty's father had abused her in front of Doty, and she admitted to burning Doty's fingers on the stove to punish him. Another of Doty's stepmothers testified that Doty's father once abused her so severely she could not work

for a week, and she testified that she witnessed Doty's father physically abuse Doty as well. She testified that Doty began writing illegal checks and stealing cars at thirteen years old. She said that after her relationship with Doty's father ended, she kept in touch with Doty and continued to support him until he murdered his employer. Doty's father testified that Doty's half-brother was struck and killed by a semi-truck a few months before Doty killed his employer. Doty's father admitted that he moved Doty "from mother to mother" and that he exposed Doty to severe physical violence against women.

At the final charging conference, the trial court reviewed the proposed jury instructions with Doty (who was representing himself). Those instructions provided that a death sentence could be imposed only if the jury unanimously found that the State had proved at least one aggravating factor beyond a reasonable doubt, that the aggravating factors found to exist were sufficient to justify the death penalty, that the aggravating factors outweighed any mitigating circumstances found to exist, and that, based on all these considerations, the defendant should be sentenced to death. Doty made no objections and told the court that he was satisfied with the proposed instructions.

The jury unanimously found that the State proved all three aggravating factors beyond a reasonable doubt, and that Doty established four nonstatutory mitigating circumstances by the greater weight of the evidence. The jury unanimously agreed that the aggravators outweighed the mitigators and unanimously recommended death. The trial court entered a sentencing order, finding that the State proved all three aggravators beyond a reasonable doubt. Although the jury had found that Doty proved only four nonstatutory mitigators, the trial court weighed the three proven aggravators against all seven of Doty's alleged mitigators. After considering and weighing the aggravators and mitigators, the trial court sentenced Doty to death.

Doty filed a motion asking the trial court to add a no-contact provision to the sentencing order, based on alleged confrontations with an assistant warden. The Department of Corrections objected, arguing that the trial court had no jurisdiction to order the Department to administratively process an inmate in any specific manner. The Department conceded, however, that the trial court could make a nonbinding recommendation if it wished to. The trial court denied Doty's motion, determining that the court lacked authority to regulate the placement of prison inmates. The court declined to write a nonbinding recommendation, stating it had no reason to believe that prison officials would follow a court's nonbinding recommendation.

ANALYSIS

I. Jury Instructions

Doty first argues that the trial court erred by failing to instruct the jury that it must find *beyond a reasonable doubt* that the aggravating factors were sufficient to warrant a death sentence and that they outweighed the mitigating factors. *577 However, these determinations are not subject to the beyond a reasonable doubt standard of proof. *Newberry v. State*, 44 Fla. L. Weekly S287, 88 So.3d 1040 (Fla. Dec. 12, 2019); *Rogers v. State*, 285 So. 3d 872 (Fla. 2019). We therefore conclude that the trial court did not err in failing to so instruct the jury.

II. Sentencing Recommendation

Next, Doty challenges the trial court's rejection of his request for a nonbinding recommendation to the Department of Corrections. Doty does not contest that the trial court lacked jurisdiction to enter a no-contact order or a binding order requiring Doty to be transferred.

Doty cites three cases for the proposition that resentencing is required when a trial court fails to exercise its discretion based on an erroneous view of the law, but all three cases are inapplicable. In *Patterson v. State*, 206 So. 3d 64, 65-66 (Fla. 4th DCA 2016), the trial court could have imposed a concurrent sentence but mistakenly believed it had no discretion in sentencing. Similarly, in *Goldwire v. State*, 73 So. 3d 844, 845 (Fla. 4th DCA 2011), the trial court "believed that because Goldwire's youthful offender VOP was based on substantive charges, it no longer had discretion for sentence imposition and was required to use the Criminal Punishment Code guidelines for sentencing"; on appeal, however, the

Fourth District held that a trial court "is not required to impose the minimum mandatory sentence, but instead, is able to do so when exercising its discretion, dependent upon the circumstances of the case." *Id.* at 846. And in *Doe v. State*, 499 So. 2d 13, 14 (Fla. 3d DCA 1986), "the trial judge labored under the mistaken impression that he was not free to reduce defendant's sentence beyond that recommended by the state ... , erroneously believing that the statute prohibited further reduction."

Unlike the trial courts in *Patterson*, *Goldwire*, and *Doe*, the court here did not deny Doty's request under any "erroneous belief" or mistaken impression of the law as to the scope of its discretion. The court acknowledged that it had the authority to write the requested nonbinding recommendation, but the court chose not to because it had "no reason to believe that Florida State Prison officials would follow a nonbinding recommendation as to [Doty's] placement."

Doty also insists that the trial court did not consider the evidence pertaining to his request, but the trial court specifically stated in its order that it considered Doty's "motion, the Department's response, [Doty's] legal arguments during the pretrial hearing, and the record." The trial court enumerated Doty's allegations against the prison and the assistant warden. Because the trial court adequately considered Doty's request and did not act under any mistaken impression of the law, we deny this claim.

III. Proportionality

Although Doty did not raise proportionality in his briefs, we have an independent obligation to review death sentences for proportionality regardless of whether the issue was raised on appeal. *Damas v. State*, 260 So. 3d 200, 216 (Fla. 2018); *see* Fla. R. App. P. 9.142(a)(5). In doing so, we conduct a "comprehensive analysis in order to determine whether the crime falls within the category of both the most aggravated and the least mitigated of murders, thereby assuring uniformity in the application of the sentence." *Silvia v. State*, 60 So. 3d 959, 973 (Fla. 2011) (quoting *Anderson v. State*, 841 So. 2d 390, 407-08 (Fla. 2003)). We consider the totality of the circumstances and compare the case ***578** with other capital cases. *Covington v. State*, 228 So. 3d 49, 68 (Fla. 2017). We do not ask if the aggravators *outnumbered* the mitigators, *Lowe v. State*, 259 So. 3d 23, 66 (Fla. 2018), but instead undertake "a thoughtful and deliberate "*qualitative* review ... of the underlying basis for each aggravator and mitigator rather than a quantitative analysis." *Gill v. State*, 14 So. 3d 946, 964 (Fla. 2009) (quoting *Urbin v. State*, 714 So. 2d 411, 416 (Fla. 1998)). We also "accept the weight assigned by the trial court to the aggravating and mitigating factors." *Covington*, 228 So. 3d at 68 (quoting *Hayward v. State*, 24 So. 3d 17, 46 (Fla. 2009)).

In Doty's first direct appeal, we found that his death sentence was proportionate in comparison to other capital cases, reasoning as follows:

> Comparing the death sentence in this case to other capital cases, we recognize that this case is exceedingly similar to the facts and circumstances of [*Gill*], a case in which the defendant was convicted of murder after he strangled his cellmate. Similar to this case, Gill had planned to kill an inmate for a substantial time before he killed his cellmate, and then, after the murder, cooperated with authorities and admitted to the murder. Gill killed his cellmate for the purpose of obtaining the death penalty and had previously warned numerous people that he had no intention of spending the rest of his life in prison and would kill again in order achieve this goal. That case involves the same three aggravators that were found in this case: (1) Gill was under a life sentence for a prior murder at the time he murdered his cellmate; (2) Gill had previously been convicted of another capital felony, i.e., the prior murder; and (3) the killing was CCP. Further, Gill presented significant mitigation, including an uncontested mental illness he had since childhood. This Court found that the sentence of death was proportional.
>
> Accordingly, we hold that the sentence of death is proportional to other cases in which the sentence of death was upheld.

Doty, 170 So. 3d at 745 (citations omitted). Because the aggravators and mitigators presented at Doty's second sentencing proceeding were identical to the aggravators and mitigators in his first penalty phase proceeding, we see no reason to depart from our previous proportionality analysis.

CONCLUSION

Having reviewed Doty's claims and having assessed the proportionality of his sentence, we affirm Doty's sentence of death.

It is so ordered.

CANADY, C.J., and POLSTON, LAWSON, and MUÑIZ, JJ., concur. LABARGA, J., concurs in part and dissents in part with an opinion.

LABARGA, J., concurring in part and dissenting in part.

I concur with the decision of the majority to affirm Doty's sentence of death. However, for the reasons expressed in my concurring in part, dissenting in part opinion in *Rogers v. State*, 285 So. 3d 872 (Fla. 2019), I dissent from the majority's use of the term "determinations" to refer to findings mandated by this Court's decision in *Hurst v. State*, 202 So. 3d 40 (2016). As I explained in *Rogers*:

> Although Florida's sentencing statutes have changed since the issuance of *Hurst*, the title of section 921.141(2), Florida Statutes (2018), is "Findings and recommended sentence by the jury," and that subsection lists precisely what we held in *Hurst* to be the "critical findings" that must be found unanimously ***579** by a jury before a sentence of death may be recommended .... A finding does not suddenly cease to be a finding simply because the statute has been reworded to remove certain references to "findings" and add the word "determine."

44 Fla. L. Weekly at S216, —— So.3d at ——.

All Citations

313 So.3d 573, 45 Fla. L. Weekly S66

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Appendix B

315 So.3d 633 (Mem)
Supreme Court of Florida.

Wayne C. DOTY, Appellant(s)
v.
STATE of Florida, Appellee(s)

CASE NO.: SC18-973
|
APRIL 15, 2021

Lower Tribunal No(s).: 042011CF000498CFAXMX

Opinion

Appellant's Motion for Rehearing is hereby denied.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

LABARGA, J., concurs with an opinion.

COURIEL and GROSSHANS, JJ., did not participate.

LABARGA, J., concurring.

As expressed in my concur in part, dissent in part opinion in *Doty v. State*, 313 So.3d 573 (Fla. Feb. 13, 2020), I maintain my dissent to the use of "determinations" instead of "findings" to describe the requirements set forth in section 921.141(2)(b)2., Florida Statutes (2018). However, because I concurred in the majority's affirmance of Doty's death sentence, I also agree with the majority's decision to deny rehearing.

All Citations

315 So.3d 633 (Mem), 46 Fla. L. Weekly S74

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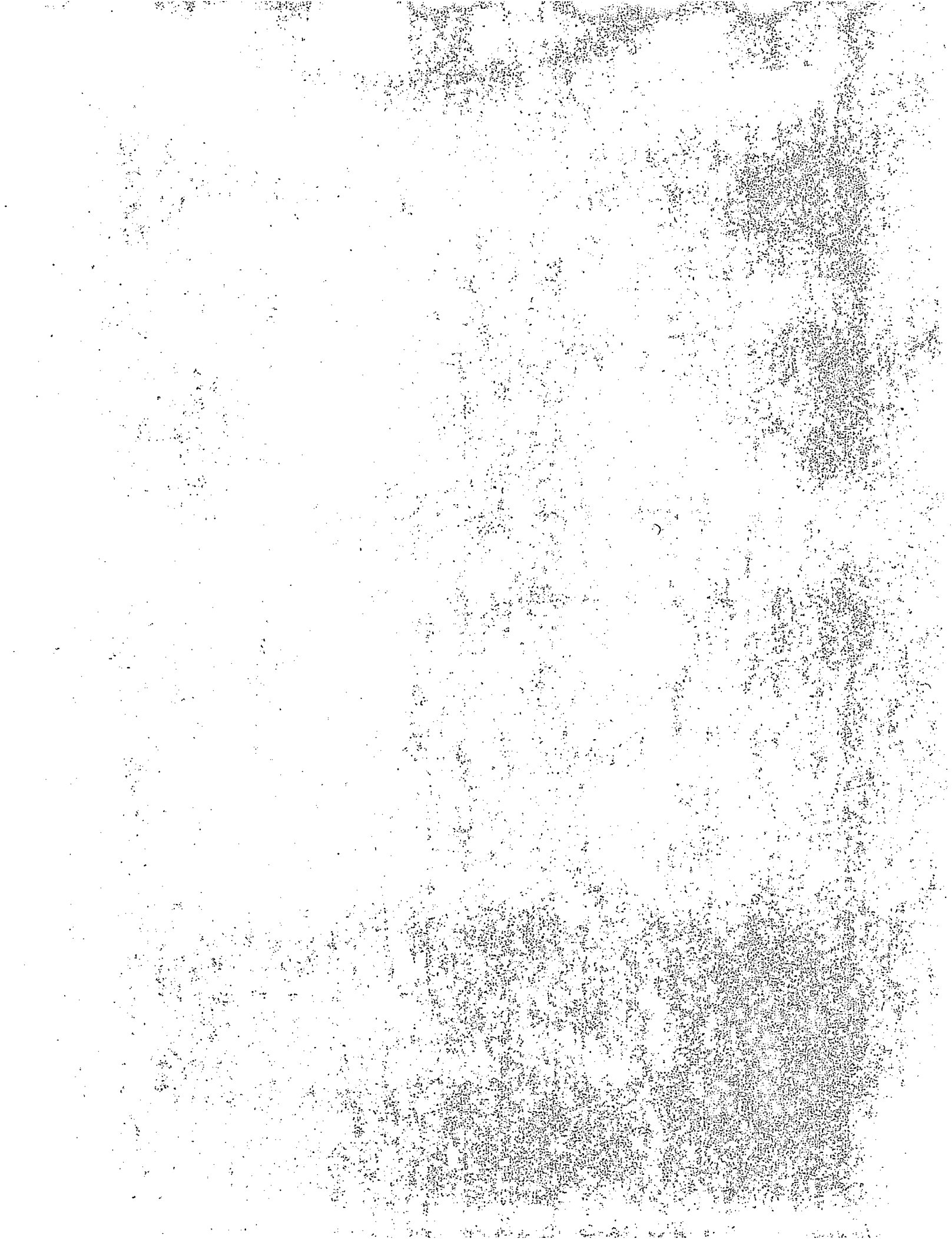

Appendix C

IN THE SUPREME COURT OF FLORIDA

WAYNE C. DOTY,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO.: **SC18-973**
	:	
STATE OF FLORIDA,	:	
	:	
Appellee.	:	
	:	
_____/		

APPELLANT'S MOTION FOR REHEARING

Appellant, Wayne C. Doty, requests that this Court grant rehearing and withdraw its opinion of February 13, 2020, affirming his sentence of death.

On February 13, 2020, this Court affirmed Mr. Doty's death sentence:

> [...] Doty argues that the trial court erred by failing to instruct the jury that it must find beyond a reasonable doubt that the aggravating factors were sufficient to warrant a death sentence and that they outweighed the mitigating factors. However, these determinations are not subject to the beyond a reasonable doubt standard of proof. *Newberry v. State*, 44 Fla. L. Weekly S287 (Fla. Dec. 12, 2019); *Rogers v. State*, 285 So. 3d 872 (Fla. 2019). We therefore conclude that the trial court did not err in failing to so instruct the jury.

Mr. Doty requests that this Court grant rehearing and withdraw its opinion of February 13, 2020. In holding that determinations as to the sufficiency of the aggravating factors and whether those factors outweigh the mitigating circumstances do not have to be made beyond a reasonable doubt, this Court

overlooked or misapprehended that the Sixth and Fourteenth Amendments to the United States Constitution require that determinations as to whether the aggravating factors are sufficient and outweigh the mitigating circumstances be made beyond a reasonable doubt.[1]

Argument

Mr. Doty was resentenced pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), after Florida's sentencing scheme was held unconstitutional in *Hurst v. Florida*, – U.S. –, 136 S. Ct. 616 (2016). In *Hurst v. Florida*, the Supreme Court invalidated the Florida sentencing scheme because the scheme imposed the death penalty after judicial fact-finding:

> Like Arizona at the time of *Ring*, Florida does not require the jury to make the critical findings necessary to impose the death penalty. Rather, Florida requires a judge to find these facts. Fla. Stat. § 921.141(3). [...] As with Timothy Ring, the maximum punishment Timothy Hurst could have received without any judge-made findings was life in prison without parole. As with Ring, a judge increased Hurst's authorized punishment based on her own factfinding. In light of Ring, we hold that Hurst's sentence violates the Sixth Amendment.

Id. at 622. The Court noted "[t]he trial court *alone* must find 'the facts...[t]hat sufficient aggravating circumstances exist' and '[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances.'" *Id.*

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[1]Mr. Doty also argued the trial court erred in failing to consider a non-binding recommendation to the Department of Corrections at the time of his resentencing. This argument has been rendered partially moot by subsequent DOC action and rehearing on this point is not requested.

(quoting § 921.141(3), Fla. Stat. (2015); emphasis in original). These "facts" were what rendered a defendant eligible for the death penalty; therefore, to place the responsibility for finding these facts on the court rather than the jury violated the Sixth Amendment. *See id.*

In response to *Hurst v. Florida*, the Florida Legislature rewrote the capital sentencing scheme to give the jury the responsibility for finding the facts that sufficient aggravating circumstances exist and the aggravating circumstances outweigh mitigating circumstances. *See* § 921.141(3), Fla. Stat. (2016).

Then, in *Hurst v. State*, 202 So. 3d 40, 52 (Fla. 2016), this Court held that "before a sentence of death may be considered by the trial court in Florida, the jury must find the existence of the aggravating factors proven beyond a reasonable doubt, that the aggravating factors are sufficient to impose death, and that the aggravating factors outweigh the mitigating circumstances." Therefore, the Court held, these findings "are also elements that must be found unanimously by the jury." *Id.* at 53.

The Court implicitly receded from this language, however, 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 by 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.

In *Rogers v. State*, 285 So. 3d 872, 885 (Fla. 2019), this Court cited *Foster* in support of the conclusion that the *Hurst* penalty phase findings are not subject to the burden of proof beyond a reasonable doubt:

> To the extent that in *Perry* . . . , 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.

Id.[2]

This retreat from the early interpretation of *Hurst* does not give effect to the Supreme Court decisions, beginning with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), making clear that factual determinations increasing the maximum penalty for a crime must be made by a jury and beyond a reasonable doubt. When an offense with a prescribed punishment can be punished more severely if additional findings are made, those findings much be "submitted to a jury, and proven beyond a reasonable doubt." *Id.* at 476 (quoting *Jones v. United States*, 526 U.S. 227, 243 (1999)). Judicial discretion can be imposed within statutory limits, but a defendant cannot constitutionally be punished with a penalty that exceeds "the maximum he would receive if punished according to the facts reflected in the jury's verdict alone." *Id.* at 482. The term "sentencing factor" refers to a fact

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[2]The Court receded from *Hurst* more explicitly in *State v. Poole*, – So. 3d –, 45 Fla. L. Weekly S41 (Fla. Jan. 23, 2020). A motion for rehearing and clarification is pending in *Poole* as of the date of this motion.

affecting the exercise of judicial discretion within those limits. *Id.* at 485-86. The labels attached to a particular finding do not determine whether the finding is within the province of the jury or the judge, as "the relevant inquiry is one not of form, but of effect." *Id.* at 494; *see also Ring v. Arizona*, 536 U.S. 584, 605 (2002).

Under Florida's capital sentencing scheme, a judge cannot consider whether to impose the maximum penalty of death until the jury has decided not only that at least one aggravating circumstance exists, but also that the aggravating circumstances justify imposing death and outweigh any mitigation. The jury finding of aggravation, by itself, does not authorize the most severe punishment available under the law. The additional findings are required to expose a capital defendant to the ultimate punishment. Therefore, based on their effect, they must be submitted to a jury and proved beyond a reasonable doubt.

Conclusion

This Court overlooked or misapprehended that the appropriate burden of proof for determinations required by Florida's capital punishment statute is dictated by the operation and effect of those determinations rather than how they are labeled, and that the Sixth and Fourteenth Amendments to the U.S. Constitution require determinations as to whether the aggravating factors are sufficient and outweigh the mitigating circumstances to be made beyond a reasonable doubt because they increase the available penalty for capital murder in

the State of Florida. Appellant requests that this Court grant rehearing, withdraw its opinion of February 13, 2020, and issue a revised opinion reversing his death sentence and remanding for a new penalty phase trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically via the Florida Courts E-filing portal to Janine D. Robinson, Assistant Attorney General, Capital Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, and by U.S. Mail to Appellant, Wayne C. Doty, DOC # 375690, Union C.I., P.O. Box 1000, Raiford, FL 32083, on this 28th day of February, 2020.

Respectfully submitted,

ANDY THOMAS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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