

No.

In The
Supreme Court of the United States

VOHN ROBERT COOPER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for a Writ of Certiorari to the
First District Court of Appeal for the State of Florida**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. WHETHER THE SENTENCING JUDGE VIOLATED COOPER'S SIXTH AMENDMENT RIGHT TO HAVE A JURY DETERMINE ANY FACT THAT INCREASED THE STATUTORY MAXIMUM IN HIS CASE.**

LIST OF PARTIES

Vohn Robert Cooper, Petitioner

State of Florida, Respondent

STATEMENT OF RELATED CASES

- *State of Florida v. Vohn Robert Cooper*, No. 1996-CF-9251, Circuit Court, Duval County Florida (Judgment entered December 9, 1996);
- *Vohn Robert Cooper v. State of Florida*, No. 1D21-1453, District Court of Appeal for the First District of Florida

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Sixth Amendment to the United States Constitution	<i>Passim</i>
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The Petitioner, Vohn Robert Cooper, respectfully prays that a writ of certiorari issue to review the decision of the First District Court of Appeal for the State of Florida entered March 15, 2022 affirming by unpublished per curiam opinion the decision of the Circuit Court in and for Duval County Florida denying Cooper's Motion to Correct Illegal Sentence pursuant to Rule 3.800(a) of the Florida Rules of Criminal Procedure.

OPINION BELOW

The decision of the First District Court of Appeal as well as the underlying Circuit Court order are included in the Appendix, *infra*.

JURISDICTION

This Court has jurisdiction to review the March 15, 2022 decision of the First District Court of Appeal of Florida affirming the lower court's order denying Cooper's Motion to Correct Illegal Sentence pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Sixth Amendment to the United States Constitution provides:

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

STATEMENT OF THE CASE

Over defense objection Cooper was sentenced December 9, 1996 as a habitual violent felony offender to an enhanced sentence of fifty (50) years imprisonment for the offense of armed robbery with a firearm, in violation of Florida Statutes, § 812.13(2)(A), a first degree felony punishable by life imprisonment. The robbery was alleged to have occurred July 27, 1996. The Florida Sentencing Guidelines in effect at the time of this offense were mandatory, unless the court made written findings to justify a departure sentence. Cooper's guideline range was 54.75 months minimum to 91.25 months maximum. To impose an upward departure sentence a judge was required to file contemporaneous written reasons which had to be based on legally accepted departure grounds. No written reasons for a departure sentence were filed and indeed the sentencing judge did not intend to sentence Cooper as a departure from the guidelines, but instead intended to sentence Cooper as a violent habitual felony offender. The sentencing judge found Cooper to be a habitual violent felony offender pursuant to Florida Statutes, § 775.084. Section 775.084(3)(a)6 required the court to make a finding of dangerousness as a predicate requirement to habitualization.

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the

defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Sentencing Commission the written reasons or transcripts in each case in which the court determines not to impose a habitual felony offender sanction or a habitual violent felony offender sanction.

Judge Brad Stetson made the required finding. Had the sentencing judge not made the dangerousness finding the Court would have been limited to sentence Cooper to the maximum guideline sentence of 91.25 months.

Cooper, through counsel, filed a sentencing correction motion under Rule 3.800(a), Florida Rules of Criminal Procedure. The Circuit Court summarily denied relief. [Appendix A of this petition]. Cooper appealed the Circuit Court's decision to the First District Court of Appeal of Florida and they affirmed the Circuit's Court denial per curiam without a written opinion. [Appendix B].

ARGUMENT IN SUPPORT OF GRANTING THE WRIT

I. WHETHER THE SENTENCING JUDGE VIOLATED COOPER'S SIXTH AMENDMENT RIGHT TO HAVE A JURY DETERMINE ANY FACT THAT INCREASED THE STATUTORY MAXIMUM IN HIS CASE.

The United States Supreme Court has declared that the "statutory maximum for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict, or admitted by the defendant." *Blakely v. Washington*, 542 U.S. 296, 303 (2004). This principle is drawn from the Supreme Court's previous ruling in *Apprendi*: "Other 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." *Apprendi*, 530 U.S. at 490. In *Blakely*, the Supreme Court simply clarified *Apprendi* by further defining "statutory maximum" as "the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." *Blakely*, 542 U.S. at 303 (emphasis in original).

Under the Sixth Amendment (applicable to the states under the Fourteenth Amendment), only a jury can make findings to authorize a sentence beyond the statutory maximum.

¹ *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

The habitual offender statute, Florida Statutes, § 775.084(3)(a)(6), requires a finding that habitualization is necessary for the “protection of the public” before a habitual offender sentence may be imposed.

At the time of Cooper’s offense and sentencing, Florida had a mandatory sentencing guideline regime similar in function to the federal sentencing guidelines under review in *United States v. Booker*, 543 U.S. 220 (2005). Under the binding, mandatory Florida guidelines, absent a valid departure, just as under the federal sentencing guidelines, a sentencing court could not impose a sentence above the sentencing guideline range. *Booker* held that that guideline maximum became the statutory maximum for Sixth Amendment *Apprendi* purposes. Thus, although the statutory maximum for Cooper’s armed robbery charge may have been life imprisonment, for Sixth Amendment purposes the sentencing court was cabined within a sentencing range of 54.75 months minimum to 91.25 months maximum. 91.25 months became the statutory maximum that a sentencing court could impose without a jury finding of any fact that would authorize any increased punishment. The sentencing judge, without a special jury verdict or admission of the defendant, made the finding required pursuant to Florida Statutes, § 775.084(3)(a)(6), that habitualization was necessary “for the protection of the public,” and upon this

judicial finding imposed a fifty-year prison sentence, more than six times as long as authorized by the binding, mandatory Florida guidelines.

This was *Apprendi* error and violated Cooper's Sixth Amendment right to have the determination made by a jury, not a judge.

CONCLUSION

WHEREFORE, the Petitioner, Vohn Robert Cooper, respectfully requests this Honorable Court grant this petition for certiorari.

Respectfully submitted,

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