FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2730

NORMAN JAMES THOMPSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
R. Anthony Salem, Judge.

July 27, 2022

PER CURIAM.

AFFIRMED.

MAKAR, WINOKUR, and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2012-CF-02375-AXXX
DIVISION: CR-I

STATE OF FLORIDA

v.

NORMAN J. THOMPSON,
Defendant.
_____/

ORDER DEFENDANT'S DENYING MOTION FOR POSTCONVICTION RELIEF

This matter came before this Court on Defendant's *pro se* "Petition for Writ of Habeas Corpus," filed on July 8, 2021, pursuant to Florida Rule of Criminal Procedure 3.850.[1]

On October 11, 2013, a jury found Defendant guilty of Sexual Battery on a Person less than Twelve Years of Age. (Ex. A.) That same day, this Court designated Defendant as a sexual predator under section 775.21(4)(a), Florida Statutes (2012), and sentenced him to life imprisonment. (Ex. B at 4, 6.) On October 7, 2015, the First District Court of Appeal issued a Mandate affirming Defendant's conviction and sentence. (Ex. C.) On November 15, 2017, Defendant filed an original "Amended Motion for Post Conviction Relief." (Ex. D.) That motion was denied on December 11, 2017. (Ex. E.)

Defendant alleges he was unconstitutionally convicted by a six-person jury instead of a twelve-person jury. Defendant's claim is improperly raised in the postconviction context because "[c]laims that could have and should have been raised on direct appeal are procedurally

[1] Defendant styles this filing as a writ of habeas corpus, but "habeas corpus is not available as a substitute for post-conviction relief under rule 3.850." Leichtman v. Singletary, 674 So. 2d 889, 891 (Fla. 4th DCA 1996). Therefore, the filing should be construed under rule 3.850. See Harris v. State, 789 So. 2d 1114, 1115 (Fla. 1st DCA 2001) (stating that courts "must determine whether [a habeas corpus] petition states a facially sufficient claim for relief pursuant to either Florida Rule of Criminal Procedure 3.850 or 3.800(a).").

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barred." Johnson v. State, 921 So. 2d 490, 507 (Fla. 2005). Defendant could have, and should have raised the constitutionality of the six-person jury before the trial court and on direct appeal; therefore, this claim is summarily denied. Furthermore, the instant motion is subject to dismissal as successive under rule 3.850(h) because Defendant raises a new and different claim, and has failed to show good cause why the claim was not asserted in his original rule 3.850 motion.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's *pro se* "Petition for Writ of Habeas Corpus," filed on July 8, 2021, is **DENIED.** This is a final Order, and Defendant shall have thirty (30) days from the date this Order is filed to take an appeal by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Jacksonville, Duval County, Florida on August 11, 2021.

R. ANTHONY SALEM
Circuit Judge

Copies to:

Office of the State Attorney (SAO4DuvalAppealOrder@coj.net)
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IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRCT
STATE OF FLORIDA

NORMAN JAMES THOMPSON
Appellant,

v.

STATE OF FLORIDA
Appellee,

_____/

DCA Case No.: 1D21-2730
L.T. Case No.: 16-2012-CF-002375

APPELLANT'S INITIAL BRIEF

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

/s/ Norman James Thompson
Norman James Thompson
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Pro-Se

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STATEMENT OF THE CASE AND FACTS

The Appellant was arrested on March 07, 2012 and charged with Capital Sexual Battery.

The Appellant stood trial on October 10th, 11th and was convicted by a six person jury of Capital Sexual Battery. The Appellant was charged/convicted with a crime that carried a life in prison sentence. (R, 36).

The Appellant filed a timely notice of appeal.

The Appellant Direct Appeal was affirmed per curiam with opinions on August 11, 2015. (R, 47).

The Appellant filed a Rule 3.850 Motion for Post-Conviction Relief on March 31, 2017 and Amended Motion on November 15, 2017. (R, 98).

The Lower Tribunal denied the Appellant's Motion /Amended for Post-conviction Relief on December 08, 2017. (R, 111).

The Appellant appealed said denial on December 28, 2017. The Appeal of the Appellant's Rule 3.850 Motion for Post-conviction Relief Affirmed/Mandate/Opined in July 22, 2019. (R, 47-56).

(The Appellant filed a Notice to Invoke Florida Supreme Court Jurisdictional on July 29, 2019.)

The Florida Supreme Court denied acceptance of jurisdiction on December 04, 2019.

The Appellant filed Federal Habeas Corpus Motion on February 10, 2020, the ruling on case pending.

The Appellant filed the Writ of Habeas Corpus on August 02, 2021, (R, 1 of 1).

The Lower Tribunal denied Writ of Habeas Corpus on August 16, 2021. (R, 1 of 1).

The Appellant timely filed a Notice of Appeal on September 02, 2021. (R, 1 of 1).

SUMMARY OF THE ARGUMENT

The sole point in this case is that the Trial Court erred in denying the Appellant's Motion for Writ of Habeas Corpus to retry the Defendant consisting of a twelve person jury instead of the six person jury.

ARGUMENT

THE LOWER TRIBUNAL COURT ERRED IN DENYING THE APPELLANTS WRIT OF HABEAS CORPUS.

In recent ruling ***Ramos v. Lousiana*** (2020) the United States Supreme Court made two distinct findings that directly affects the Appellant. First, the use of the Supreme Clause to enforce a right.

Secondly, the use of common law and history as a basis for the use of the Supreme Clause.

Ramos v. Louisiana, was a case involving two states that allowed non-unanimous verdicts. The ruling itself is more about the use of common law and history as it directly affects the non-unanimous argument.

Two Supreme Court justices, Justice Alito and Justice Gorsuch both opined that the ***Ramos v. Louisiana*** ruling would force the court to reconsider ***William v. Florida***, (1970).

The *William's* court ruled that, since there was no empirical data available that proves disparity between a twelve person vs. a six person jury, a six person jury is sufficient for the State of Florida to use in criminal cases.

The *William's* court cited one study but the author rebuked, after the court's ruling, the Court's interpretation of said study. No other empirical data was used, much less available at that time. The six person vs. the twelve person jury was not studied, to any significant degree, until after the 1970 *Williams'* court ruling. Since that time, as evidence in the Appellant's Writ of Habeas Corpus a plethora of studies have been compiled. All of the studies have reached the same conclusion: a six person jury is unfair to

any defendant, but especially to a minority defendant. The data cannot be denied.

The State had argued in ***Williams v. Florida***, the same as ***Gideon V. Wainwright*** (1963). That it would cost too much and without actual studies to prove otherwise a six and twelve person jury were the same. The studies completed have proved that False, of this there is no doubt.

The Lower Tribunal likes to argue that the Writ of Habeas Corpus cannot be used as a second appeal on that the Writ of Habeas Corpus should have been a Post-Conviction Relief Motion.

Although, its true a Writ of Habeas Corpus cannot be used as a second appeal that fact that the ruling in ***Ramos v. Louisiana***, April 29th, 2020, is recent and directly affects the use of six person juries and the ***William v. Florida***, (1970) ruling. The only recourse for the Appellant was/is the Writ of Habeas Corpus.

The Great Writ is steep in history, as is a twelve person jury. The history of both are interlocking in many respects. The Great Writ is for incarcerated inmates who are illegally detained. The Opinion in ***Ramos v. Louisiana,*** demonstrated that the use of history and common law were used in crafting the court's ruling.

The Supreme Court stated that since the Federal Government uses unanimous verdicts only in criminal cases, common law dictates unanimous verdicts and the history of unanimous verdicts cannot be denied, therefore, the *Ramos* Court ruled accordingly.

The ruling by the *Ramos* Court included two justices who stated that this directly affects ***Williams v. Florida***, and that ***Williams v. Florida*** must now be revisited.

The Appellant's Writ of Habeas Corpus sites studies of empirical data that refutes the *Williams* Court ruling. The studies clearly demonstrate that a black defendant cannot receive a fair trial, if the jury consists of only six members. No argument can be made otherwise. The data and studies clearly demonstrate that a black defendant is unlikely to have one black juror and almost no chance of having two or more black jurors.

The United States Constitution's Sixth Amendment guarantees, as a right, a jury of peers indicative of the defendant's community. The six member jury denies all minorities this right.

Until the ***Ramos v. Louisiana*** decision this issue was moot due to *Stare Decisis, ie.* ***Williams v. Florida*** (1970).

The *Willliam's* Court had already ruled and the issue was unavailable until ***Ramos v. Louisiana***.

The unanimous verdict argument had the court referring to the origins of the common law practice of requiring unanimous verdicts. The history of unanimous verdicts was also instrumental in the *Ramos* Court's decision.

A manifest injustice occurred due to fundamental error/manifest error. The error is the use of a six person jury to convict a defendant, especially a minority defendant, contrary to history and common law. The studies and data were a culmination from the 1970's thru 2020. The Cornell and Duke University studies, 2010 thru 2020 demonstrates the prejudice of a six member jury.

The *Ramos* Court Stated:

"Thus, if the jury trial right requires a unanimous verdict in federal court, it requires no less in state court."

Both arguments in ***Ramos v. Louisiana*** brought about the ruling.

The Supremacy Clause and the right afforded to defendants in Federal Court were rulings from the Ramos court. The *Ramos* Court used history and common law practices to solidify the Sixth Amendment right. The Sixth Amendment does not specifically state "unanimous "but it does state "impartial jury."

The *Ramos* Court further stated:

> "Sixth Amendment affords a right to ``a trial by jury as understood and applied at common law, . . . includ[ing] all the

essential elements as they were recognized in this country and England when the Constitution was adopted."

Ramos v. Louisiana (2020) page 6 of the opinion.

"The Williams court found the number twelve, as for the number of jurors, to be a "historical accident." The United States Constitution and Federal Protections require, as a right, twelve person juries. Yet, Florida is allowed to deny that right to defendants charged with crimes in Florida. Florida does, however, allow twelve person juries from capital punishment cases, (death penalty only).

Yet, Florida has no problem incarcerating a defendant for life utilizing a six person jury. This death penalty may be considered more humane that the sentence of life in prison. A lifetime of torture and loss of freedom compared to a quick ending must account for something.

The only advantage of a six member jury is to the State. The State conviction rate rises as the numbers of jurors are lessened from twelve. The Sixth Amendment uses the term impartial jury. The Studies which culminated up to 2020, clearly demonstrate that a defendant, especially a black defendant, will most likely be convicted because an impartial jury is not afforded to black defendants.

The studies also demonstrated that six member juries do not recall facts as readily as twelve member juries. A study is currently underway to

see how many juries ask for read-backs of testimony. Thus providing the need for twelve member juries. ***Downs v. Moore*** (Fla. 2001).

Fundamental error is the type of error that reaches down into the validity of the trial itself to the extent that a verdict of guilty or recommendation of death could not have been obtained without the assistance of the alleged error. ***Card v. State*** (Fla. 2001).

The Appellant's case was clearly not a slam-dunk for prosecutors. The time determining factor was the all-white jury that ultimately convicted the black appellant. The prejudice attached in the Appellant's trial by use of a six member jury is demonstrated by the verdict. Scant evidence and an inherently prejudiced jury will convict and the studies/empirical data proves this.

The Appellant, if given a twelve member jury, "impartial jury," as guaranteed by Federal Law, would not have been convicted. The numerous errors of the trial, the jury deliberations and ultimately the jury finding would have been altered considerably, if the Appellant's right to a twelve member jury was enforced.

The Studies and ***Ramos v. Louisiana*** decision were both completed in 2020. The Appellant filed a Writ of Habeas Corpus upon discovery of studies and *Ramos* decision. The Appellant thru due diligence

has continued to adamantly prosecute post-conviction proceedings due to the manifest injustice in the Appellant's case.

The Lower Tribunal stated in its order denying the Appellant's Writ of Habeas Corpus as follows:

"Defendant alleges he was unconstitutional convicted by a six-person jury instead of a twelve-person jury. Defendant's claim is improperly raised in the postconviction context because claims that could have and should have been raised on direct appeal are procedurally barred. Defendant could have and should have raised the constitutionally of the six person jury before the trial court and on direct appeal, therefore, this claim is summarily denied. Furthermore, the instant motion is subject to dismissal as successive under Rule 3.850(h) because Defendant raises a new and different claim and has failed to show good cause why the claim was not asserted in his original Rule 3.850 motion." (August 11, 2021) (R. 36, 37).

The Ruling/Opinion of the Lower Tribunal does not take into account the ***Ramos v. Louisiana*** decision nor the studies completed in 2020. Neither of which were available at trial or on direct appeal. The fact that ***Williams v. Florida*** (1970) was well settled law precludes the argument. It

was not until the *Ramos* court identified the unanimous right that the six member jury could be argued without attempting a *Stare Decisis* argument.

The *Ramos* court utilizing the Supreme Clause enforced the unanimous verdict requirement. The same logic must be used to enforce the use of twelve member juries.

The racial composition could not have been effectively raised on appeal for some of the studies, as cited on the Appellant's Writ of Habeas Corpus, were not available until 2020.

The culmination of studies/empirical data and ruling in ***Ramos v. Louisiana*** were not discoverable until 2020.

The Lower Tribunal has considered that the Appellant is not entitled to relief because the *Ramos* Court confirmed only a unanimous verdict, not a twelve member jury. The *Ramos* Court actually was the use of the Supreme Clause to enforce a Constitutional Right that was common law and requested by Federal law. Due to the *Ramos* ruling a twelve person jury is a guaranteed right, through the Sixth/Fourteenth Amendments.

The ruling does not specify twelve person jury but the opinion utilizes the Supreme Clause and a common right, not to mention the two Supreme Court Justice who stated the *Ramos* ruling requires a review of *Williams* v. Florida (1970).

Which does fall in direct conflict in the ruling of ***Williams and Ramos.***

Therefore, upon a careful review of this opinion and how it directly affects ***Williams v. Florida*** ruling a different outcome would have been produced.

The Appellant discovered in 2021 the ***Ramos v. Louisiana*** (April 29th, 2020) decision and the accumulated studies ending with Duke University (2020) study which clearly demonstrates that a black defendant in Florida cannot receive a fair trial utilizing a six person jury. The Appellant could not have filed this argument before receiving the *Ramos* decision and Duke University study. This argument was unavailable until 2020 and therefore, any prior filing would have been met as a *Stare Dicisis* argument and never entertained. The inherent prejudice to the Appellant is also real prejudice. The all-white jury in the Appellant's case convicted with scant evidence. The jury was anything but impartial as guaranteed by the United States Constitution.

The jury composition and partiality are established concerning cumulative errors and its effect of injustice by the following:

a) The court erred in the dismissal process of jurors for cause based on pretrial publicity (Eighteenth month), (three trials) and there partiality.

These jurors were dismissed exiting secretly through a side courtroom exit. Next, the procedure was changed in which, the dismissed for cause were allowed to sit among the prospective jurors tainting the jury pool.

b) Assistant State Attorney Simak addressed the jury in her closing argument stating that the State don't have proof that this crime occurred, doesn't have evidence beyond a reasonable doubt that this defendant committed this crime. (TT, 538).

c) The six member jury reached a unanimous guilty verdict in fifty – seven minutes of deliberations and the polling of the jury was conducted. (TT. 604-606).

d) A Supplemental Motion for New Trial, filed by Trial Counsel addressed the following claims:

1) The court erred in denying Defendant 's objection to the jury panel not being a fair, accurate and reasonable representation of the Defendant's peers in that the court allowed the State to improperly strike those jurors that were similar in age and a race to the Defendant.

2) The court erred in selecting the Defendant's panel of jurors out of the same panel as a non-charged white co-defendant with two relative charges.

3) The court erred by not allowing the Defendant to select his particular jury first, before the other Defendant which prejudiced the Defendant by allowing the other Defendant to select jurors that would have been selected by the Defendant for his case if available. The Supplemental Motion for New Trial was denied due to trial counsel's untimeliness.

e) On Direct Appeal, Appellate Counsel raised the following claim:

1) The jury panel utilized a bar that did not fairly represent the community and was not a fair cross section.

The Appeal Court affirmed with opinion on Direct Appeal, the jury panel issue ruled to be without merit.

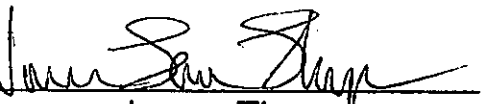
f) The Appellant raised the following claim on Post-conviction,

1) Trial Counsel rendered ineffective assistance of counsel for failing to object to Neil error in striking all black jurors thereby eliminating a race neutral jury. The Lower Tribunal ruled, the Defendant fails to allege or demonstrate any actual jury bias on the record. (R.107).

The cumulative errors listed (supra) deprived the Appellant of a fair and impartial trial as guaranteed by the Sixth/Fourteenth Amendments of the United States Constitution.

CONCLUSION

WHEREFORE, the Appellant Norman James Thompson moves this Honorable Court to review the ***Ramos v. Louisiana*** decision/ruling and how it affects ***Williams v. Florida*** (1970). The Appellant moves the Honorable Court to reverse, remand and vacate all counts and require a retrial with a twelve member jury as guaranteed by the Sixth/Fourteenth Amendment pursuant to the ***Ramos v. Louisiana*** ruling (2020).

/s/ 

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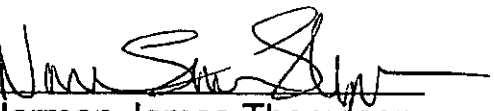
CERTIFICATE OF SERVICE

I, Norman James Thompson, hereby certify that I furnished via U.S. Mail a true and correct copy of the foregoing Initial Brief to the following: Clerk of the Court, First District Court of Appeal, 2000 Drayton Dr. Tallahassee, FL 32399; The Office of the Attorney General, the Capitol PL-01, Tallahassee, FL 32399 on this 30th day of November 2021.

/s/ 
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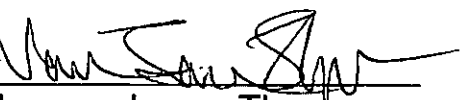
CERTIFICATE OF COMPLIANCE

I, Norman James Thompson, hereby certify that the foregoing Initial Brief complies with the font requirement of Rule 9.045(b). Fla.R.App.P.

/s/ 
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