

PROVIDED TO MARION C.I.  
12-22-22 FOR MAILING. DW

ORIGINAL

Application No.: 22-6450

Supreme Court, U.S.

FILED

DEC 22 2022

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

DEDREVIONUS C. WILLIAMS – PETITIONER

v.

STATE OF FLORIDA – RESPONDENT

---

On Petition for Writ of Certiorari to  
The Fourth District Court of Appeal, State of Florida

---

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Dedrevionus C. Williams, Pro Se  
D/C # K78641  
Marion Correctional Institution  
P.O. Box 158  
Lowell, FL 32663-0158  
Tel. No. : None Available

## QUESTION PRESENTED

1. Does Florida's Statute §775.082(9) Prison Releasee Reoffender sentence violate a defendant's U.S. Constitutional rights per this Court's holdings in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Blakely v. Washington*, 542 U.S. 296, 303 (2004); and *Alleyne v. United States*, 570 U.S. 99 (2013) because:
  - (a) It allows the State to prove a defendant's prison release date by a lesser "preponderance of the evidence" standard rather than the higher "beyond a reasonable doubt" standard required at trials? and
  - (b) It allows a judge, rather than a jury, to make the finding of fact regarding a defendant's prison release date when imposing a PRR minimum mandatory sentence equal to the prescribed statutory maximum sentence?

## LIST OF PARTIES

---

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Ciklin, Hon. Cory J.	4 <sup>th</sup> District Court of Appeal, Florida (Direct Appeal)
Conner, Hon. Burton C.	4 <sup>th</sup> District Court of Appeal, Florida (State Habe App)
Gerber, Hon. Jonathan D.	4 <sup>th</sup> District Court of Appeal, Florida (State Habe App)
Greene, Richard B.	Assistant Public Defender (Direct Appeal)
Klingensmith, Hon. Mark W.	4 <sup>th</sup> District Court of Appeal, Florida (State Habe App)
Kuntz, Hon. Jeffrey T.	4 <sup>th</sup> District Court of Appeal, Florida (Direct Appeal)
Long, William C.	Assistant State Attorney (State Habeas Petition)
May, Hon. Melanie G.	4 <sup>th</sup> District Court of Appeal, Florida (Direct Appeal)
Napodano, Luke R.	Assistant Attorney General (Direct Appeal)
Neal, Ricky Tyrone	Defendant, 9 <sup>th</sup> Judicial Circuit Ct, Orange County, FL
Pegg, Hon. Robert	19 <sup>th</sup> Jud. Circuit Ct, Indian River Cty, FL (Trial/Sent)
Ponall., Atty. William Rudolf	Defense Atty. ( <i>Neal</i> ), 9 <sup>th</sup> Jud. Cir Ct, Orange Cty, FL
Reiss, Atty. Bradley R.	Defense Atty. ( <i>Neal</i> ), 9 <sup>th</sup> Jud. Cir Ct, Orange Cty, FL
Seegobin, Ralph V.	Asst. State Atty ( <i>Neal</i> ), 9 <sup>th</sup> Jud. Cir Ct, Orange Cty, FL
Vaughn, Hon. Dan L.	19 <sup>th</sup> Jud. Circuit Ct, Indian River Cty, FL (State Habe)
Williams, Dedrevionus C.	Appellant/Petitioner/Defendant
Young, Hon. Tom	<i>Neal</i> Trial Judge, 9 <sup>th</sup> Jud. Circuit Ct, Orange Cty, FL
Zaragoza, M. Jordi	Assistant Public Defender (Trial Defense Counsel)\

## RELATED CASES

- *Williams v. State of Florida*, No. 31-2013-CF-001635-A, 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida. Trial and sentence occurred November-December 2015 (Hon. Robert Pegg).
- *Williams v. State of Florida*, 229 So. 3d 354 (Fla. 4<sup>th</sup> DCA 2016), Case No. 4D15-4755, Fourth District Court of Appeal, West Palm Beach, Florida (Direct Appeal). Per Curiam Affirmed Opinion entered December 15, 2016. Mandate issued January 2017.
- *Williams v. State of Florida*, No. No. 31-2013-CF-001635-A, 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida. State Habeas Corpus Petition filed on December 7, 2021 and denied by Hon. Dan L. Vaughn on February 23, 2022. Notice of Appeal filed on March 21, 2022.
- *Williams v. State of Florida*, 2022 Fla. App. LEXIS 4942 (Fla. 4<sup>th</sup> DCA 2022), Case No. 4D22-0794, Fourth District Court of Appeal, West Palm Beach, Florida (State Habe Petition Appeal). Per Curiam Affirmed Opinion entered July 21, 2022. Motion for Rehearing en Banc and Written Opinion denied September 23, 2022. Mandate issued October 14, 2022.
- *Ricky Tyrone Neal v. State of Florida*, No. 48-1999-CF-10077-A-O, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida. Hon. Tom Young grants Defense Motion to Declare Florida Statute §775.082(9) Prison Releasee Reoffender Unconstitutional in a Pre-Resentencing Hearing dated December 8, 2020.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
LIST OF PARTIES.....	ii
RELATED CASES .....	iii
TABLE OF CONTENTS.....	iv
INDEX TO APPENDICES.....	v
TABLE OF AUTHORITIES.....	vi
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4 – 6
REASONS FOR GRANTING THE PETITION.....	6 – 11
<b>Does Florida's Statute §775.082(9) Prison Releasee Reoffender sentence violate a defendant's U.S. Constitutional rights per this Court's holdings in <i>Apprendi v. New Jersey</i>, 530 U.S. 466, 490 (2000); <i>Blakely v. Washington</i>, 542 U.S. 296, 303 (2004); and <i>Alleyne v. United States</i>, 570 U.S. 99 (2013) because:</b>	
A. It allows the State to prove a defendant's prison release date by a lesser "preponderance of the evidence" standard rather than the higher "beyond a reasonable doubt" standard required at trials? and	
B. It allows a judge, rather than a jury, to make the finding of fact regarding a defendant's prison release date when imposing a PRR minimum mandatory sentence equal to the prescribed statutory maximum sentence?	
CONCLUSION.....	11
OATH .....	12
PROOF OF SERVICE .....	13

## INDEX TO APPENDICES

**APPENDIX A** October 14, 2022 mandate from Florida's 4<sup>th</sup> District Court of Appeal making the appeal of the State Habeas Corpus Petition final.

**APPENDIX B** September 23, 2022 order from Florida's 4<sup>th</sup> District Court of Appeal denying Williams's Motion for Rehearing en Banc and for Written Opinion regarding the State Habeas Corpus Petition.

**APPENDIX C** July 21, 2022 per curiam affirmed order regarding the appeal of Williams's State Habeas Corpus Petition denial order by the lower court.

**APPENDIX D** February 23, 2022 Order Denying Petition for Writ of Habeas Corpus issued by Hon. Dan L. Vaughn in the 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida.

**APPENDIX E** November 8, 2021 "Levin Letter" that the 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida converted to a State Petition for Writ of Habeas Corpus under Fla.R.Crim.P. Rule 3.850(m).

**APPENDIX F** February 7, 2022 State's Response to Williams's State Petition for Writ of Habeas Corpus filed by the State Attorney's Office in the 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida .

**APPENDIX G** October 15, 2020 Motion to Declare Fla. Stat. §775.082(9) Unconstitutional filed by Defense Counsel in *State v. Ricky Tyrone Neal*, L.T. Case No. 48-1999-CF-10077-A-O, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida.

**APPENDIX H** December 8, 2020 pre-Resentencing Hearing Transcripts whereby Hon. Tom Young, in *State v. Ricky Tyrone Neal*, L.T. Case No. 48-1999-CF-10077-A-O, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida granted Neal's Motion to Declare Fla. Stat. §775.082(9) Unconstitutional.

## TABLE OF AUTHORITIES

## PAGE NO.

### CASES

<i>Alleyne v. United States</i> , 570 U.S. 99 (2013).....	6, 7, 8, 9, 10, 11
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 490 (2000).....	6, 7, 8, 9, 11
<i>Blakely v. Washington</i> , 542 U.S. 296, 303 (2004).....	6, 7, 8, 9, 11
<i>Brown v. State</i> , 277 So.3d 616 (Fla. 2018).....	8
<i>Calloway v. State</i> , 914 So.2d 12 (Fla. 2 <sup>nd</sup> DCA 2005).....	9
<i>Jackson v. State</i> , 241 So.3d 914 (Fla. 1 <sup>st</sup> DCA 2018).....	9
<i>Robinson v. State</i> , 793 So.2d 891 (Fla. 2001).....	8
<i>Williams v. State of Florida</i> , 2022 Fla. App. LEXIS 4942 (Fla. 4 <sup>th</sup> DCA 2022) .....	1
<i>Williams v. State</i> , 242 So.3d 280, 286 (Fla. 2018).....	10

### STATUTES AND CODE

28 U.S.C. §1254(1) .....	2
28 U.S.C. §1257(a) .....	2
Florida Statute §775.082(9).....	4, 6, 7
Florida Statute §775.082(1)(b)(1).....	9

### RULES

U.S. Supreme Court Rule 29 .....	13
----------------------------------	----

### OTHER

Fifth Amendment of the U.S. Constitution.....	3, 4, 7
Fourteenth Amendment of the U.S. Constitution .....	3, 5, 7
Sixth Amendment of the U.S. Constitution.....	3, 4, 7

## OPINIONS BELOW

For cases from **Federal** courts:

The opinion of the highest Federal Court to review the merits appears at \_\_\_\_\_ to the petition and is:

- reported at \_\_\_\_\_; or
- has been designated for publication but is not yet reported; or
- is unpublished.

The opinion of the lower Federal Court appears \_\_\_\_\_ to the petition and is:

- reported at \_\_\_\_\_; or
- has been designated for publication but is not yet reported; or
- is unpublished.

For cases from **State** courts:

The opinion of the highest State Court to review the merits appears at **Appendix A, B, and C** to the petition and is:

- reported at *Williams v. State of Florida*, 2022 Fla. App. LEXIS 4942 (Fla. 4<sup>th</sup> DCA 2022); or
- has been designated for publication but is not yet reported; or
- is unpublished.

The opinion of the 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida appears at **Appendix D** to the petition and is:

- reported at \_\_\_\_\_; or
- has been designated for publication but is not yet reported; or
- is unpublished.

## JURISDICTION

For cases from **Federal** courts:

The date on which the highest Federal Court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

- No petition for rehearing was timely filed in my case.
- A timely Petition for Rehearing was denied by the U.S. Circuit Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.
- An extension of time to file the petition for writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_A\_\_\_\_\_.
- The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

For cases from **State** courts:

The date on which the highest State Court decided my case was July 21, 2022. A copy of that decision appears at **Appendix C**.

- A timely Petition for Rehearing was thereafter denied on the following date: September 23, 2022, and a copy of the order denying rehearing appears at **Appendix B**.
- An extension of time to file the petition for writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_A\_\_\_\_\_.
- The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitutional Issues Involved**

The Fourteenth Amendment of the U.S. Constitution provides, in pertinent part, as follows:

“No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of the law; nor deny any person within its jurisdiction the equal protection of the laws.”

The Sixth Amendment of the U.S. Constitution provides as follows:

“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.”

The Fifth Amendment of the U.S. Constitution provides as follows:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice out in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

## STATEMENT OF THE CASE

This case involves a residential burglary that occurred on December 24, 2013. On October 26, 2015, the State filed an Amended Information charging the Petitioner, Dedrevionus C. Williams with three counts as follows: Armed Burglary of a Dwelling (Count 1); Grand Theft of a Firearm (Count 2); and Possession of a Firearm by a Convicted Felon (Count 3).

On November 4, 2015, Williams went to trial on Count 1 Armed Burglary of a Dwelling. After deliberations, the jury found the Petitioner guilty as charged.

On December 10, 2015, sentencing was held in front of Hon. Judge Robert Pegg. The court issued a mandatory Life sentence in prison as a Prison Releasee Reoffender (“PRR”).

On December 15, 2016, the 4<sup>th</sup> District Court of Appeal, West Palm Beach, Florida issued its Per Curiam Affirmed opinion. The mandate issued in January 2017, making the direct appeal of this case final.

On November 8, 2021, the Petitioner filed an untitled “Levin Letter” that the lower court treated as the instant Petition for Writ of Habeas Corpus (**Appendix E**). The Petition argued that the Appellant’s Life sentence under Florida Statute §775.082(9) (the Prison Releasee Reoffender (“PRR”) Statute) was issued in violation of his constitutional rights. The Petition argued that Williams’ PRR sentence is unconstitutional for two reasons. First, the PRR statute allows the State to prove a defendant’s prison release date by a lesser “preponderance of the evidence” standard rather than the higher “beyond a reasonable doubt” standard required at trials. Second, the PRR statute allows a judge, rather than a jury, to make the finding of fact regarding a defendant’s prison release date when imposing a PRR minimum mandatory sentence beyond the prescribed statutory maximum sentence. These two factors violated the Appellant’s Fifth, Sixth,

and Fourteenth Amendment rights under the United States Constitution. Additionally, the PRR sentencing scheme runs contrary to clearly established case law from the Supreme Court of the United States and the Supreme Court of Florida.

On December 8, 2021, postconviction Judge Hon. Dan L. Vaughn issued an order directing the State Attorney's Office to respond to the Petition within sixty days of the order.

On February 7, 2022, Assistant State Attorney ("ASA") Thomas Bakkedahl filed the State's Response to the instant Petition (**Appendix F**). The State noted that the same arguments presented in this instant petition were made by Defense Counsel in *State v. Ricky Tyrone Neal*, L.T. Case No. 48-1999-CF-10077-A-O, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida (**Appendix G**; **Appendix H**). There, Hon. Judge Tom Young agreed with Defense Counsel and declared the PRR statute unconstitutional. However, in Williams's instant case, ASA Bakkedahl requested Indian River County Judge Hon. Dan L. Vaughn to enter an order denying the instant Petition. First, the State argued that a decision out of the 9<sup>th</sup> Judicial Circuit Court had no binding authority over how the 19<sup>th</sup> Judicial Circuit Court should rule upon the validity of the PRR statute (**Appendix F**). Second, the State argued that the Florida Supreme Court and all five of the Florida District Courts of Appeal have written past opinions finding the PRR statute and the PRR sentencing scheme constitutional (**Appendix F**). Therefore, the State argued that Judge Vaughn was bound to follow the past opinions of both the Florida Supreme Court and the 4<sup>th</sup> District Court of Appeal. The State requested that the lower court deny Williams's State habeas petition and find the Appellant's PRR sentence constitutional.

On February 23, 2022, postconviction Judge Vaughn issued his Final Order denying Williams's Petition for Habeas Corpus (**Appendix D**). The one-page order incorporated and adopted the State's reasoning and citations to contrary DCA opinions holding that the PRR

statute is constitutional. The lower court held that since the Petitioner made no showing that he does not qualify as a PRR under the statute, Williams is entitled to no relief.

On March 21, 2022, Williams filed his timely notice of appeal.

On July 21, 2022, the 4<sup>th</sup> District Court of Appeal, West Palm Beach, Florida issued its per curiam affirmed opinion (Judges Klingensmith, Gerber, and Conner) (**Appendix C**).

On September 23, 2022, the 4<sup>th</sup> District Court of Appeal denied Williams's Motion for Rehearing en Banc and for Written Opinion (**Appendix B**), starting the 90-day time limitation for timely filing this Petition in this Honorable Court.

Accordingly, this Petition is timely if handed to a prison official for mailing **on or before December 22, 2022**.

#### **REASONS FOR GRANTING THE PETITION**

Does Florida's Statute §775.082(9) Prison Releasee Reoffender sentence violate a defendant's U.S. Constitutional rights per this Court's holdings in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Blakely v. Washington*, 542 U.S. 296, 303 (2004); and *Alleyne v. United States*, 570 U.S. 99 (2013) because:

- A. It allows the State to prove a defendant's prison release date by a lesser "preponderance of the evidence" standard rather than the higher "beyond a reasonable doubt" standard required at trials? and**
- B. It allows a judge, rather than a jury, to make the finding of fact regarding a defendant's prison release date when imposing a PRR minimum mandatory sentence equal to the prescribed statutory maximum sentence?**

- 1. Florida's 4<sup>th</sup> District Court of Appeal holding has resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.**

On October 15, 2020 this exact same issue was filed by Defense Counsel Atty. William Rudolf Ponall in *State v. Ricky Tyrone Neal*, L.T. Case No. 48-1999-CF-10077-A-O, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida (see **Appendix G**).

On December 8, 2020, Hon. Tom Young held a pre-Resentencing Hearing on this motion, and granted Neal’s “Motion to Declare Fla. Stat. §775.082(9) Unconstitutional” (see **Appendix H, Hearing Transcripts**).

On November 8, 2021, the Petitioner filed an untitled “Levin Letter” that the lower court treated as the instant Petition for Writ of Habeas Corpus (**Appendix E**). The Petition adopted the same arguments in by Defense Counsel Atty. William Rudolf Ponall in *State v. Ricky Tyrone Neal*, L.T. Case No. 48-1999-CF-10077-A-O by reference and attached exhibits. Williams argued that the Appellant’s Life sentence under Florida Statute §775.082(9) (the Prison Releasee Reoffender (“PRR”) Statute) was issued in violation of his constitutional rights and was in conflict with this Court’s holdings in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Blakely v. Washington*, 542 U.S. 296, 303 (2004); and *Alleyne v. United States*, 570 U.S. 99 (2013).

First, the PRR statute allows the State to prove a defendant’s prison release date by a lesser “preponderance of the evidence” standard rather than the higher “beyond a reasonable doubt” standard required at trials. Second, Williams argued that the PRR statute allowed a judge, rather than a jury, to make the finding of fact regarding a defendant’s prison release date when imposing a PRR minimum mandatory sentence beyond the prescribed statutory maximum sentence. These two factors violated Williams’ Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and are contrary to clearly established law issued as determined by the Supreme Court of Florida and this Honorable Court.

In *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), this Honorable Court held that “other than the fact of a prior conviction, any fact that increases the penalty of a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” In *Blakely v. Washington*, 542 U.S. 296, 303 (2004), this Honorable Court defined the “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.” In *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), this Honorable Court included minimum mandatory sentences (like those required by Florida’s PRR statute) as being included under *Apprendi*’s umbrella. The *Alleyne* Court specifically held that minimum mandatory sentences are subject to the *Apprendi* rule requiring a jury to find all the facts that require the imposition of the minimum mandatory sentence. This Honorable Court held, “Because minimum mandatory sentences increase the penalty for a crime, any fact that increases the mandatory minimum is an “element” that must be submitted to the jury” (see *Alleyne*, *id.*, 133 S.Ct. at 2152-2154). Therefore, the fact of Williams’ prison release date used to impose his PRR minimum mandatory sentence must be submitted to, and supported by, a jury’s finding using the “reasonable doubt” standard rather than found by the sentencing judge using a lesser “preponderance of the evidence” standard.

The last time the Florida Supreme Court ruled on this issue was in 2001 in *Robinson v. State*, 793 So.2d 891 (Fla. 2001), where they found that *Apprendi* did not apply to the PRR Statute. However, *Robinson*, *id.* is no longer good law based on this Honorable Court’s 2018 decision in *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2018) and the Florida Supreme Court’s 2018 decision in *Brown v. State*, 277 So.3d 616 (Fla. 2018). In *Brown*, *id.*, the Florida Supreme Court applied both *Apprendi*, *id.*, and *Alleyne*, *id.*, to find that a

different subsection (Florida Statute §775.082(1)(b)(1)) violated the *Apprendi* rule because it allowed the judge and not the jury to increase a maximum sentence based on the judge's finding of fact that Brown was dangerous to society.

In *State v. Ricky Tyrone Neal*, L.T. Case No. 48-1999-CF-10077-A-O, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida, the State argued that the 2<sup>nd</sup> DCA decision in *Calloway v. State*, 914 So.2d 12 (Fla. 2<sup>nd</sup> DCA 2005) and the 1<sup>st</sup> DCA decision in *Jackson v. State*, 241 So.3d 914 (Fla. 1<sup>st</sup> DCA 2018) are both still good law. In *Calloway*, *id.*, the State appellate court held that the date of release from a prior prison sentence is a derivative of the prior conviction and therefore did not violate this Honorable Court's decisions in either *Apprendi*, *id.* or *Blakely*, *id.* In *Jackson*, *id.*, the State appellate court held that the defendant's release date from prison was a part of his prior record and thus did not need to be presented to a jury and proved beyond a reasonable doubt thereby making *Apprendi*, *id.* and *Blakely*, *id.* inapplicable. The State argued that in *Jackson*, *id.*, the 1<sup>st</sup> DCA concluded that the fact of whether the defendant committed the charged offense within three years of release from prison is not an ingredient of the charged offense, rather it relates to the fact of the prior conviction. The State further argued that: *Apprendi*, *id.* involved a New Jersey hate crime statute; *Blakely*, *id.* involved a Washington State statute involving whether a defendant exhibited deliberate cruelty; and *Alleyne*, *id.* involved a violation of a federal firearm statute (none involving Florida's PRR statute or a defendant's prior conviction). The State argued that most of the Defense case laws related to findings involving a defendant's conduct and not to his prior convictions.

In rebuttal argument, Defense Counsel Ponall argued that upon review of the language in *Apprendi*, *id.*, this Court should agree that the "prior conviction" language was expressly narrow and it did not intend to include other facts like a prior prison release date. Counsel argued that

there was no Federal support for the State's position, and that the State's cases were all decided prior to *Alleyne*, *id.*

When deciding the *Neal*, *id.* case, Judge Hon. Tom Young held, "I'm going to find that the (PRR) Statute cannot be constitutionally applied because the (prison release date) is an aggravating factor and thus, a constituent element and, thus, has to be submitted to the jury and proven beyond a reasonable doubt, just as a prior conviction would have to be submitted to a jury and proven in order to obtain a conviction for possession of a firearm by a convicted felon or, as Mr. Ponall argued before, driving while license suspended type charge. So, I am going to grant the motion." Judge Young held that the U.S. Supreme Court language in *Alleyne*, *id.* is "pretty clear," and "combined with the way *Williams v. State*, 242 So.3d 280, Florida Supreme Court 2018, quotes *Alleyne*," the finding of all facts used to determine whether a defendant committed his new offense within three years of his release from prison must be submitted to a jury thereby making the PRR Statute unconstitutional.

For the reasons cited previously, on February 23, 2022, postconviction Judge Vaughn issued his Final Order denying Williams's Petition for Habeas Corpus (**Appendix D**). The one-page order incorporated and adopted the State's reasoning and citations to contrary DCA opinions holding that the PRR statute is constitutional (**Appendix F**).

Despite the conflict between Hon. Tom Young, 9<sup>th</sup> Judicial Circuit Court, in and for Orange County, Florida and Hon. Dan Vaughn, 19<sup>th</sup> Judicial Circuit Court, in and for Indian River County, Florida as to whether Florida's PRR Statute is unconstitutional, on July 21, 2022, the 4<sup>th</sup> District Court of Appeal, West Palm Beach, Florida issued its per curiam affirmed opinion (Judges Klingensmith, Gerber, and Conner) (**Appendix C**).

On August 4, 2022, Williams filed his Motion for Rehearing en Banc and for Written Opinion with the 4<sup>th</sup> DCA. In support of this motion for rehearing en banc, the Appellant argued that the initial 3-judge panel misapplied or overlooked the rulings of the United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), *Blakely v. Washington*, 542 U.S. 296, 303 (2004), and *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013). Williams stated that a consideration by the full court was necessary to maintain uniformity of decisions across the State of Florida, and that a written opinion was warranted because this issue was a matter of great public importance. On September 23, 2022, the 4<sup>th</sup> District Court of Appeal denied Williams's Motion for Rehearing en Banc and for Written Opinion (**Appendix B**), fully exhausting the Petitioner's efforts for relief in the State courts, and starting the 90-day time limitation for timely filing this Petition in this Honorable Court.

## **CONCLUSION**

This Court should grant the instant writ of certiorari for the reasons stated above.

## OATH

Under penalty of perjury, I certify that all of the facts and statements contained in this document are true and correct and that on the 22<sup>nd</sup> day of December 2022, I handed this document and exhibits to a prison official for mailing out to this Court and the appropriate Respondents for mailing out U.S. mail.

/s/ Dedrevionus C. Williams K78641  
Dedrevionus C. Williams, D/C # K78641  
Marion Correctional Institution  
P.O. Box 158  
Lowell, FL 32663-0158