No. 22-6879

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

BOBBY O. WILLIAMS — PETITIONER
(Your Name)

vs.

STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ILLINOIS, FIFTH JUDICIAL DISTRICT APPELLATE COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BOBBY O. WILLIAMS, REG. NO.B80463
(Your Name)

2500 ROUTE 99 SOUTH
(Address)

MT.STERLING, ILLINOIS 62353
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

On Petitioner's second direct appeal, in resolving Petitioner's sufficiency of evidence claim regarding the existence of a single statutory aggravating factor that extended his sentence beyond the statutory maximum sentence that could be imposed, Illinois Appellate Court interpreted the "general verdict form" evidence used to prove the existence of the aggravating factor, to reflect conclusions of matters of facts determined on Petitioner's first direct appeal, an interpretation that invaded the province of the jury and effectively relieved the State of Its burden of proving the existence of the aggravating factor "anew", a novel interpretation that is contrary to Illinois Statutes and more than 30 years of Illinois Supreme Court's decisions intepreting the Statutes involved, in order to salvage the natural life sentence imposed on Petitioner:

I.) WHETHER, IN DOING SO, THE COURT'S RESOLUTION REPRESENTS AN UNFORESEEABLE AND RETROACTIVE JUDICIAL EXPANSION OF NARROW AND PRECISE STATUTORY LANGUAGE THAT DENIED PETITIONER DUE PROCESS-FAIR WARNING?

II.) WHETHER, IN DOING SO, THE COURT RE-WEIGHED THE "GENERAL VERDICT FORM" EVIDENCE IN A MANNER THAT DENIED PETITIONER DUE PROCESS-LIBERTY INTEREST IN HAVING THE JURY MAKE PARTICULAR FINDINGS OF THE AGGRAVATING FACTOR BASED ON REASONABLE EVIDENCE?

III.) WHETHER THE COURT DENIED PETITIONER ADEQUATE ACCESS TO THE COURT, HIS DUE PROCESS RIGHT TO BE HEARD ON HIS SUFFICIENCY OF EVIDENCE CLAIM, WHEN IT RULED PETITIONER COULD NOT CHALLENGE THE SUFFICIENCY OF THE "GENERAL VERDICT FORM" EVIDENCE USED TO PROVE THE EXISTENCE OF THE STATUTORY AGGRAVATING FACTOR TO MAKE HIM ELIGIBLE FOR A NATURAL LIFE 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:

RELATED CASES

People v. Williams,193 Ill.2d 1,737 N.E.2d 230(2000), conviction affirmed, death penalty reversed and remanded for re-sentencing. Judgment entered July 6,2000.

People v. Williams,Appellate Court No. 5-08-0459(2011), Unpublished Opinoin. Judgment entered Mar. 8,2011.

People v. Williams,2014 IL App (5th) 120385-, Unpublished opinoin, Fith Judicial District Appellate Court. Judgment entered 2015.

Williams v. Lashbrook, No.15-cv-475-DRH-CJP, U.S. District Court for the Southern District of Illinois. Judgment entered Nov. 6, 2016.

Williams v. Lashbrook,No.16-4100, U.S.Court of Appeals for the Seventh Circuit. Judgment entered July 24,2017.

Williams v. Goldenhersh,No. M.D.14395 , Illinois Supreme Court. JUdgment entered Nov. 30, 2019.

Williams v. Goldenhersh,No, M.D.014812, Illinois Supreme Court. Judgment entered Nov. 29,2022.

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STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ 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 United States district court appears at Appendix _____ 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 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 Illinois Appellat Court 5th Judicial Dist. court appears at Appendix A 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 United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States 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 a 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 November 29, 2023. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a 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).

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

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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 November 29, 2022. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a 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

U.S.Const.Amend. IV:

Jury trial for crimes,***

> "In all criminal prosecutions, the accused shall enjoy the right to *** public trial,***".

U.S Const.Amend. XIV §1:

Citizenship rights not to be abridged by states.

> "Section 1. *** No State shall make or enforce any law which shall 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 law, ***."

720 ILCS 5/9-1 et. seq.(West 1994):

Because of the length, the text of the above section is set forth in Appendix F of this Document.

720 ILCS 5/9-1(b)(6)(West 1994):

> "**(b) Aggravating Factor.** A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if:
>
> ***
> (6) the murdered individual was killed in the course of another felony if:
>
> (a) the murdered individual:
>
> (i) was actually killed by the defendant, or
>
> (ii) received physical injuries personally inflicted by the defendant substantially contemporaneously with with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this Code [720 ILCS 5/5-2], and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and

(ii)received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this code[720 ILCS 5/5-2], and the physical injuries inflicted by either the defendant or the person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and

(b)in performing the acts which caused the death of the muredered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subsection (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another; and

(c)the other felony was one of the following: armed robbery, ***;"

(d) **Separate sentencing hearing.** Where requested by the State, the court shall conduct a separate sentencing proceeding to determine the existence of factors in subsection (b) ***. The proceeding shall be conducted:

(1) ***; or

(2)before a jury impanelled for the purpose of the proceeding if:

***

***

(c)the court for good cause shown discharges the jury that determined the defendant's guilt; or

***."

(f) **Proof.** The burden of proof of establishing the existence of any of the factors set forth in subsection (b) is on the State and shall not be satisfied unless established beyond a reasonable doubt."

730 ILCS 5/5-8-1(a)(1)(b)(West 2004):

"(a)Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

(1) for first degree murder,

(a) a term shall be not less than 20 years and not more than 60 years, or

(b)if a trier of fact finds beyond a reasonable doubt that *** any of the aggravating factors listed in subsection (b) of Section 9-1 of the Criminal Code of 1961[(720 ILCS 5/9-1 (b)] are present the court may sentence the defendant to a term of natural life imprisonment,***".

STATEMENT OF THE CASE

The reported facts of this case may be found in previous opinoins and will be reported as needed to present the issues raised herein. See People v. Williams, 193 Ill.2d 1, 737 N.E.2d 230(2000); People v. Williams, Appellate Court No. 5-08-0459 (2011)(Rule 23 Order)(Attached to this Petition at Appendix).

On January 26, 1995, Bobby O. Willimas, was charged by Indictment, with first-degree murder, alleging that on November 3, 1994, with intent to kill or do great bodily harm, he shot and killed Sharon Bushong, (720 ILCS 5/9-1(a)(West 1994).(C-2)

On November 21,1996, a jury trial began. At the close of evidence the trial court instructed the jury on multiple theories of first-degree murder: intentional or knowing or felony murder predicted on the offense of Armed Robbery.(R.1357-1358) At the conclusion of trial the jury returned a "general verdict" of guilt for the offense of first-degree murder.(R.1362)

After returning a "general verdict" of guilt for the offense , the jury was asked to find whether Petitioner was eligible for the death penalty based on two statutory aggravating factors.

The jury returned a verdict finding Petitioner eligible for the death penalty. After evidence in mitigation and aggravation was presented the jury found that there were no mitigating factors that precluded the imposition of the death penalty. Petitioner was sentenced to death.(R.1570) Petitioner appealed

directly to the Illinois Supreme Court.(C-341)

On direct appeal, Illinois ("Il") Supreme Court affirmed the conviction but vacated the death penalty and remanded for a new sentencing hearing.Williams,193 Ill.2d at 47. In vacating the death penalty, Il. Supreme Court held: (1) that the evidence was insufficient to support a finding beyond a reasonable doubt under section 720 ILCS 5/9-1(b)(11)- that the murder was committed in a cold, calculated manner etc.,See Williams,193 Ill.2d at 40; (2) that the jury's verdict of the felony-murder aggravating factor was legally insufficient because it omitted the required mental state needed to support a finding of death eligibility under section 720 ILCS 5/9-1(b)(6), See Williams,193 Ill.2d at 40-41. Accordingly, because neither of the aggravating factors supporting the death penalty could be sustained, Il. Supreme Court vacated the death sentence.Williams,193 Ill.2d at 45.

In remanding for a new sentencing hearing, Il. Supreme Court noted that the evidence was insufficient to support the cold and calculated aggravating factor, the State was prohibited by principles of double jeopardy from pursuing death eligibility under this factor at the sentencing hearing.See Williams,193 Ill.2d at 46. However, because Il. Supreme Court's reversal of the felony-murder aggravating factor was not based on insufficient evidence but a flawed verdict form, double jeopardy did not bar the State from pursuing death eligibility under the felony-murder factor.Id.

ON REMAND FOR RE-SENTENCING

On January 10, 2003, then Governor Ryan issued an executive

order of commutation: "Sentence Commuted to a Sentence Other Than Death for the Crime of Murder, so That the Maximum Sentence that may be Imposed is Natural Life Imprisonment With the Possibility of Parole or Mandatory Supervised[Release]." (R.C531)

On April 23, 2004, the State filed a Notice of Intent to Seek an Extended Term sentence based upon the 9-1(b)(6) factor (the eligibility factor that the murder occurred during the course of an armed robbery, and that the victim was actually killed by the defendant, or received injuries personally inflicted by the defendant substantially contemporaneously with injuries caused by a person for whom the defendant is legally accountable) , and requested that the case be set for a sentencing hearing before a jury to determine the existence of the 9-1(b)(6) factor, (730 ILCS 5/5-8-1(a)(1)(b)(West 2004) and 720 ILCS 5/9-1(b)(6) (West 1994)).(C-558)

JURY ELIGIBILITY HEARING WHILE ON REMAND

On April 14, 2008, a jury was empaneled pursuant to 720 ILCS 5/9-1(c), (d), and (f) of the Criminal Code of 1961, for the limited purpose of finding whether the 9-1(b)(6) factor exist beyond a reasonable doubt.(Hereinafter, simply referred to and cited as "Eligibility Hearing".)

At the eligibility Hearing, the trial court informed the venire that it was a "sentencing procedure" that a judgment for murderhad been entered against Petitioner.(Eligibility Hearing at 3)

During the eligibility hearing the State moved to admit into evidence and published to the jury People's exhibit 100-

a certified copy of the Indictment and "general verdict" of guilt returned by the 1996 jury for the offense of murder.(Eligibility Hearing at 138)(People's Exhibit 100, attached to this Petition's Appendix.) The State presented the prior testimony of Shirley Etherton, the store manager for Convenient Food Mart on November 3, 1994.(Etherton, having passed away before the Eligibility Hearing.) Bushong was an employee at the store.(Id., at 146) The store had a video camera security system.(Id., at 147) Etherton had seen the videotape "[since that"].(Id., at 149) Etherton was "aware of what happened to" Bushong, and knew that Bushong had been murdered.(Id.) Sometime after Bushong's murder, Etherton condicted an inventory of the store, and determined that $77 was missing from the store.(Id., at 149-150) The videotape Etherton had seen was off one hour due to change to "day light saving time."(Id., at 150) After reading the transcripts of Etherton's prior testimony, the parties stipulated that "People's Exhibit No.29 is the original VHS tape recovered from the Convenient Food Mart."(Id., at 151)

John Schneider, a videographer, testified that he viewed the original tape and found thirty-one frames that were relevant to this case.(Eligibility Hearing at 162) He slowed down the thirty-one frames to show one frame every five seconds (155 seconds).(Id., at 162) The court granted the states motion to admit the slowed down tape and it was shown to the jury.(Id., at 168) The videographer testified that the person who went behind the checkout counter in the videotape was wearing a garment on his head, and was not identifiable.(Id., at 168)

Officer Calvin Dye testified to Petitioner's date of birth. (Id., at 141-143)

The State had no additional witnesses and rested.(Id., at 169) The defense rested without presenting evidence.(Id., at 214)

After closing arguments, the jury retired for deliberation at 10:20A.M.(Id., at 247) After sending out several questions about what the State was require to prove and did prove (Id., at 259, 249-250, 267-268) At 1:55 P.M., the jury returned a verdict finding the 9-1(b)(6) aggravating factor.(Id., at 269-70)

On June 17, 2008, a sentencing hearing was held where the court sentenced Petitioner to natural life imprisonment predicated on the eligibility jury's finding the 9-1(b)(6) factor. (C1373)(Sentencing Order attached to this Petition in the Appendix)

THE APPEAL

On appeal Petitioner argued, among other things, that the evidence was unreasonable-insufficient to prove the 9-1(b)(6) aggravating factor beyond a reasonable doubt, where the "general verdict form" evidence presented to the jury only showed that Petitioner had been convicted of first-degree murder, then cited People v. Ramey, I51 Ill.2d 498, 538-540(1992)(and citing cases) for the proposition and argued that the "general verdict form" evidence did not show/prove whether Petitioner was the person that murdered the murdered individual, or was found guilty of being the person that actually murdered Bushong. Further, relying

on Ramey Petitioner further argued that the "general verdict form " evidence does not prove or show whether Petitioner was not merely convicted under the theory of accountability or the offense of felony murder, simply as a lookout or as the second individual in the videotape who did not appear to harm the person behind the cash register.

That there was insufficient evidence to prove that Petitioner was even shown on the videotape, or that Bushong was the person shown in the videotape, or that a robbery occurred, or that Petitioner inflicted a fatal wound on Bushong, so that, the jury deliberations and finding rest on mere conjecture or speculation. (See Petitioner's appellate court Brief at 30-36, and Reply Brief at 15-20)

On March 11,2011, the Fifth District Appellate Court, Justice Richard P. Goldenhersh affirmed the natural sentence holding in relevant part,

> "As previously noted, the supreme court already rejected defendant's claims that the evidence presented during trial was insufficient to prove him guilty of first degree murder beyond reasonable doubt. In affirming defendant's conviction , the supreme court noted: (1) defendant admitted to killing Buhsong, (2) at the time of his arrest defendant was in possession of the weapon used to kill Bushong, (3) defendant had been seen with the gun in his possession prior to and after the Bushong murder, and (4) defendant not only is the same height as the person who shot Bushong.Williams,193 Ill. 2d at 25-26, 737 N.E.2d at 244-45. We agree with the State that defendant cannot now relitigate the issue of whether he was actually and intentionally the person who killed Bushong, nor can he claim that People's Exhibit 100, the guilty verdict, is not evidence of these facts.
> Further, we are well aware of Apprendi v. New Jersey,530 U.S. 466(2000), which holds that any fact used as a reason to increase a sentence must be submitted to a jury and proved beyond reasonable doubt. That standard was met here

> by the submission of the indictment and guilty verdict. A rational jury could have found the qualifying factor based upon the indictment and guilty verdict."

People v. Williams, Appeal No. 5-08-0459, Slip Op., at 14-15 (2011)(Attached to this Petition in the Appendix.)

On June 30, 2011, Petitioner filed a Petition for Rehearing , Citing People v. Ramey,151 Ill.2d 498, 538-40(1992), Williams, 193 Ill.2d at 44, People v Euller,205 Ill.2d 308, 344-45(2002) , arguing among other things, that the appellate court effectively denied Petitioner his Liberty Interest right to have a jury find the 9-1(b)(6) factor by independently finding, from Il. Supreme Court's direct appeal decision, that Petitioner was the person who actually murdered the murdered individual, based on facts never presented to the eligibility jury; Arguing, that Il. Supreme Court's conclusions on matters of facts did not control the eligibility hearing nor the appeal of the eligibility hearing, citing Ziolkiwski v. Continental Casualty Co., 365 Ill. 594, 599, 7 N.E.2d 451, 545(1937); Further arguing, that Il. Supreme Court had already determined in Ramey,151 Ill. 2d 498, 538-40(1992), citing People v. Garcia,97 Ill.2d 58, 84, 454 N.E.2d 274(1983), and People v. Miller, 89 Ill.App.3d 973, 979, 412 N.E.2d (1980), that a general verdict form of guilt of first-degree murder does not reveal whether the jury found the defendant guilty of actually killing anyone or whether he was convicted on the basis of accountability or felony murder (i.e., 720 ILCS 5/9-1(a)(3)); Also arguing, that the appellate court

denied Petitioner due process by eliminating the State's duty to have to prove the 9-1(b)(6) factor "anew", citing Fuller, 205 Ill.2d at 344-45, when it relied on Il. Supreme Court's determinations on matters of facts on direct appeal of this case in an attempt to cure the State's failure to provide sufficient evidence to prove the 9-1(b)(6) factor; and, Argued, citing Il. Supreme Court's direct appeal decision in this case, that the appellate court used the decision in a manner that conflicts with the decision where the Il. Supreme Court ruled that It could not and would not independently find the existence of the 9-1(b)(6) factor, See Williams, 193 Ill.2d at 44, by effectively using the court's decision to independently find the 9-1(b)(6) factor exist; Arguing, that the appellate court denied Petitioner due process and fair appellate review of his sufficiency of evidence claim by holding that Petitioner could not challenge the sufficiency of the "general verdict form" evidence. (Petition for Rehearing at 4-7, filed 6/30/2011, Appeal No. 5-08-0459(2011))

On July 6, 2011, the appellate court denied Petition for Rehearing.

On August 11, 2011, Petitioner filed an Amended Petition for Appeal as a Matter of Right or Petition for Leave to Appeal. Petitioner argued, among other things, essentially what he argued in his Petition for Rehearing and Briefs filed in the appellate court. (See Amended Petition for Appeal as a Matter of Right or Petition for Leave to Appeal, at 12-20.)

On November 30,2011, Il. Supreme Court denied Petitioner's Amended Petition for Appeal as a Matter of Right or Leave to Appeal.

Subsequently thereafter, Petitioner filed a timely Amended Petition for Habeas Corpus relief pursuant to 28 U.S.C. §2254, Doc.17, Docket No. 3:15-cv-457-DRH-CJP.

Among other things, the Amended Petition raised the following ground,

> C. There was insufficient evidence presented to the extended -term qualifying jury to establish that petitioner was the person who intentionally and actually murdered Sharon Bushong during the course of an armed robbery, in violation of his "liberty interest" right to a jury trial and Apprendi v. New Jersey,120 S.Ct. 2348(2000). Doc. 17, p.39.

First, the district court found that Petitioner did not raise before the appellate court, the "intentional" element of his claim (Doc. 110, p.3586), although the appellate court addressed and ruled on the intentional element in Its decision which federal case law ruled is enough to meet the issue of fair presentation requirement for Habeas Corpus.

Second, the district court found that the Petitioner's liberty interest argument was defaulted because it was raised only in his reply Brief on his appeal before the appellate court , although the liberty interest violation did not occur until the appellate court's resolution of the sufficiency of evidence issue and where petitioner raised the issue in his Petition for Rehearing, the first opportunity the issue could be raised after the liberty interest violation occurred.

Third, the district court found that even if the Liberty Interest violation was not defaulted it added little to the Apprendi argument(Id.), although Petitioner's Liberty Interest argument concerned due process violations of rights that the State of Illinois afforded Petitioner by way of the Statutes involved and Illinois Supreme Court's interpretation of those Statutes, which afforded Petitioner more protection then Apprendi afforded. Clearly, the district court ignored Illinois Supreme Court's interpretation of Illinois Statutes and laws involved; and,

Fourth, in violation of this Court's rulings concerning State court authority governing State law (See e.g., Mullany v. Wilbur,421 U.S. 684, 691(1975)(Federal Courts are bound by State court's interpretation of State law and bound by their construction.);Wainwright v. Goode,464 U.S. 78, 84(1983)(per curiam)(Views of the State's highest court with respect to state law are binding on federal court's), the district court took it upon itself to interpret Illinois law and Statutes and contrary to Illinois Supreme Court's interpretation of Illinois law found, "The jury at petitioner's trial was instructed that , in order to find petitioner guilty of first degree murder,it must first find that he "'performed the acts which caused the death of Sharon Bushong'"[CItation]. It follows, then, that the jury found that petitioner actually killed Sharon Bushong."Doc. 110, p3588. However, the district court ignored petitioner's arguments that under Illinois law the jury instructions are

generic as they are used in all prosecutions for first degree murder whether the defendant was prosecuted as the principle or under the theory of accountability or felony murder pursuant to 720 ILCS 5/9-1(a)(3)(West 1994).See Illinois Pattern Jury Instructions, Criminal No. 7.02(3rd ed. 1994); also People v. Maxwell,148 Ill.2d 116, 133-39,592 N.E.2d 960,968-71(1992).

On November 9,2016, the district court denied petitioner Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Doc. 111,p.3596.

ARGUMENT

On Petitioner's second direct appeal, in resolving Petitioner's sufficiency of evidence claim regarding the existence of a single aggravating factor, Illinois Appellate Court interpreted the "general verdict form" evidence used to prove the existence of the aggravating factor, reflectd conclusions of matters of facts determined on petitioner's first direct appeal, an interpretation that invaded the province of the jury and relieved the State of Its burden of proving the existence of the aggravating factor "anew", contrary to Illinois Statutes and the more than 30 years of Illinois Supreme Court's decisions interpreting the statutes involved, to uphold the natural life sentence imposed on Petitioner:

I.) HOWEVER, IN DOING SO, THE COURT'S RESOLULTION REPRESENTS AN UNFORESEEABLE AND RETROACTIVE JUDICIAL EXPANSION OF NARROW AND PRECISE STATUTORY LANGUAGE THAT DENIED PETITIONER DUE PROCESS, FAIR WARNING?

To understand this issue, we must first know that the jury here was empaneled pursuant to Illinois Death Penalty eligibility statutes.See 720 ILCS 5/9-1(b),(c),(d),and (f) (West 1994). The State asked the trial court to empanel a jury pursuant to the death penalty eligibility statutes to find whether the 9-1(b)(6) factor exist beyond a reasonable doubt , the State filed Its notice to seek a natural life sentence.

Because the eligibility hearing at issue here was held pursuant to the eligibility statutes, Illinois Supreme Court's decisions interpreting the statutes control this issue.See e.g., Wainwright v. Goode,464 U.S. 78,84,104 S.Ct. 378(1983) (Per curiam)(Views of the State's highest court with respect to State law are binding on Federal Courts.);See Ricky v. Chicago Transit,98 Ill.2d 546,551-52(1983)(Lower courts lack authority to ignore or overrule Illinois Supreme Court's decisions.).

The Statutes and Illinois Supreme Court's decisions interpreting the statutes are more than 30 years old...that the law is well-settled:

First, the Illinois death penalty statutes list several statutory aggravating factors which also serve to make a person eligibili for a natural life sentence.See 730 ILCS 5/5-8-1(b) West 2004), together with 720 ILCS 5/9-1(b), (c), (d), and (f)

(West 1994). Under the above statutes the State is required to prove beyond a reasonable doubt the existence of an aggravating factor, that is, a factor that makes a defendant eligible for a natural life sentence before one can be sentenced to a natural life imprisonment. See Id., with People v. Swift, 202 Ill.2d 378, 388, 781 N.E.2d 292(2002); People v. Smith, 233 Ill.2d 1, 17, 906 N.E.2d 529(2009)(and citing cases); See also, People v. Simms, 143 Ill.2d 154, 572 N.E.2d 947(1991)(For Illinois Supreme Court's interpretation of death peanlty eligibility statutes.).

Second, the State sought to have Petitioner found eligible for anatural life sentence on the basis that the murder was committed in the course of an armed robbery, that is, the 720 ILCS 9-1(b)(6)(West 1994) statutory aggravating factor. See 720 ILCS 5/9-1(b(6)(West 1994). Pursuant to the 9-1(b)(6) factor , it was not enough that the murder occurred during an armed robbery for the existence of the aggravating factor to be proven. The State had a duty to prove to the eligibility jury, that Petitioner was convicted of the murder, (a)(i) and (ii)- was the person that actually murdered the murdered individual or that the murdered individual received physical injuries personally inflicted by Petitioner, (b)- that Petitioner acted with the intent to kill the murdered individual or with knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another, 720 ILCS 5/9-1(b)(6)(West 1994). See People v. Smith, 233 Ill.2d at 17, citing People v. Fuller, 205 Ill.2d 308(2002) and People v. Mack, 167 Ill.2d 525, 538(1995)(and see prior appeals of Mack regarding

elements that make-up the 9-1(b)(6) factor, People v. Mack, 105 Ill.2d 103, 473 N.E.2d 880(1984)).

Third, Illinois Appellate Court interpreted the Statutes to require that during eligibility the State shoulders the burden "anew" or "all over again" to prove the elements that make-up or constitute the 9-1(b)(6) factor, assuming arguendo, the State proved some of the elements during the November 1996 trial of the underlying offense, or, in the case of Fuller, where even after Fuller pled guilty to the offense of first-degree murder the State was required to prove knowing and intent elements of the 9-1(b)(6) factor "anew".Fuller,205 Ill.2d at 344-45;People v. Armstrong,183 Ill.2d 130, 700 N.E.2d 960,976(1998) (Justice Freeman, concurring in part and dissenting in part)(At the eligibility stage the State "shoulder[s] the burden all over again" to prove that the defendant really did intend to kill his victim or created a strong probability of death.Stewart v. Peters,958 F.2d 1379,1387(7th Cir.1992).).

Fourth, Illinois Supreme Court interpreted the eligibility statutes required the State to prove the requisite elements of the statutory aggravating factor beyond a reasonable doubt, and also vest a defendant, if he or she so chooses, to have a jury make the finding of such aggravating factor. Accordingly, relying on this Court's decision in Hicks v. Oklahoma,447 U.S. 343,346, 100 S.Ct. 2227(1980), Illinois Supreme Court held that the finiding of the existence of the statutory aggravating factor is one exlcusively reserved to the jury in which a defendant has a protected liberty interest.See People v. Ramey,151 Ill.

.2d 498,547-50(1992);People v. Mack,167 Ill.2d 525,534,658 N.E.2d 437(1995)(and federal csaes cited therein); and Williams,193 Ill. 2d at 44(and citing cases), and reaffirmed in Smith,233 Ill.2d at 25(2009).

Fifth.....the Illinois Supreme Court has interpreted a general verdict form of guilt of first degree murder, used as evidence of eligibility, does not reveal whether the defendant was convicted of actually killing anyone, or whether he was convicted on the basis of accountability or mere felony murder,See Ramey,151 Ill.2d at 540, Citing People v. Chandler,129 Ill.2d 233,248, 543 N.E.2d 1290(1989), and People v. Garcia,97 Ill.2d 58,84,454 N.E.2d 274(1983), which is reasonable under Illinois Law becasue under Illinois law the return of a general verdict of guilt by a jury does not imply unaminity as to any one theory.See People v. Simms,143 Ill.2d at 170(1991). And,

Sixth, under Illinois law it is well-settled that Upon remand for a new trial*** the trial must, of course, be governed by legal principles in the opinion of the rewiewing court, but its conclusions as to matters of facts do not control on a later trial where facts are determined in that trial.See Ziolksli v. Causualty Co.,365 Ill. 594,599, 7 N.E.2d 451,454(1937)(citing cases). Further, determinations of law made by a reviewing court are binding on remand to the circuit court and on subsequent appeal to the appellate court unless a decision of a higher court changes the law, "but determinations concerning issues of fact are not".See Valcun Materials Co. Holzbauer ,234 Ill.App.3d 444,599 N.E.2d 449,454-55(4th Dist.1992)(citing cases)

Accordingly, the State's burden of proving the 9-1(b)(6) factor

"anew", the elements that the State was required to prove beyond a reasonable doubt, Petitioner's Liberty Interest right to have the jury make the necessary findings of the 9-1(b)(6) factor before he would be eligible for a nartural life sentence, what a general verdict form of guilt of first-degree murder proves and does not prove as far as evidence of eligibility... has been Illinois Law for more then 30 years. Thus, the Statutes involved and Illinois Supreme Court's interpretation of the same , gave Petitioner fair warning of their means and effect, and permitted Petitioner to rely on their meaning, that is, until the appellate court's resolution of Petitioner's second direct appeal.

In short, on the second direct appeal Petitioner argued, among other things, that before the remand eligibility jury, the State failed to prove that "he was the person that actually murdered the murdered individual"...a necessary element of the 9-1(b)(6) factor. He argued that the evidence was unreasonable, improbable, or unsatisfactory to prove the existence of the 9-1(b)(6) factor where, among other things, the "general verdict form" of guilt of first degree murder was insufficient to prove said element of the 9-1(b)(6) factor; Because, the "general verdict form" evidence did not reveal or prove to the eligibility jury, what theory of first-degree murder that he was found guilty of, or whether he was found guilty of actually murdering the murdered individual. For all the jury knew, he was found guilty on a theory of accountability or for felony murder....theories of first-degree murder that do not require a defendant to have been the person that actually murdered the murdered individual

, to be convicted of first-degree murder.

The appellate court affirming the natural life sentence held, inter alia,

> "As previously noted, the [Illinois] supreme court already rejected defendant's claims that the evidence presented during trial was insufficient to prove him guilty of first-degree murder beyond a reasonable doubt. In affirming defendant's conviction, the [Illinois] supreme court noted: (1) defendant admitted to killing Bushong, (2) at the time of his arrest defendant was in possession of the weapon used to kill Bushong, (3) defendant had been seen with the gun in his possession prior to and after the Bushong murder , and (4) defendant not only is the same height as the person who shot Bushong but also is lefthanded, as was the person who shot Bushong.Williams,193 Ill.2d at 25-26,[citation]. We agree with the State that defendant cannot now relitigate the issue of whether he was proven guilty beyond a reasonable doubt on the question of whether he was actually and intentionally the person who killed Bushong, nor can he claim that People's Exhibit 100, the guilty verdict , is not evidence of these facts."

People v. Williams,Appeal No. 5-08-0459, Slip Op., at 14-15(2011).

Contrary to the Statutes involved, Illinois Supreme Court's decision interpreting the same, and the Il. Supreme Court's decision in this case, and the well-settled law that matters of conclusions of facts do not control on remand or appeal after remand, the appellate court relying on Il. Supreme Court's conclusions on matters of facts on the first appeal in this case , held that the State provided sufficient evidence to prove the 9-1(b)(6) factor. As a result, the appellate court affirmed the natural life sentence imposed on Petitioner by essentially holding that Il. Supreme Court's determinations on matters of facts on the first direct appeal, were somehow reflected in the "general verdict form" of guilt evidence.

Accordingly, the appellate court's decision on Petitioner's second direct appeal, effectively constitutes an unforeseeable and indefensible enlargement of or change of the death penalty eligibility statutes by **ex post facto judicial law making,** because the appellate court's decision and rationale does not follow the reason for the Statute, the language of the death penalty eligibility statutes, nor Il. Supreme Court's decisions interpreting the same. In that, the State was not required to prove "anew" the 9-1(b)(6) factor beyond a reasonable doubt, and the jury was not required to find that the Petitioner was the person that actually murdered the murdered individual. In this case a necessary element of the 9-1(b)(6) factor because if the State failed to prove the Petitioner was the person that actually murdered the murderd individual, surely the State fails to prove the intent or knowing elements of the 9-1(b)(6) factor.

Illinois Supreme Court, relying on this Court's decisions as described therein below, held in People v. Granados, 172 Ill.2d 358,367-68, 666 N.E.2d 1191(1996)(and citing cases):

> Article I of the United States Constitution provides that neither ocngress nor any state shall pass any "ex post facto Law."See U.S.Const.,art.I§9,cl.3;art. 1§10,cl.1. Encompassed within this prohibition class of laws is, inter alia, a law that "'changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.'"(Emphasis omitted) Collins v. Youngblood,497 U.S. 37,42, 110 S.Ct. 2719, 111 L.Ed.2d 30,38(1990), qouting Calder v. Bull,3 U.S.(3Dall.) 386,390,1 L.Ed. 648 ,650(1798). The purpose of this constitutional prohibition is to ensure that legislative enactments "give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." Weaver v. Graham,450 U.S. 24,28-29,101 S.Ct. 960,964,67 L.Ed.2d 17,23(1981). While the language of the ex post facto clause speaks to legislative enactments and does not on its face apply to

> judicial action, it has been held that the prohibition applies to judicial interpretation of statutory law. Marks v. United States, 430 U.S. 188, 191-92, 97 S.Ct. 990, 992-93, [citation] (1977); Bouie v. Columbia, 378 U.S. 347, 352-54, 84 S.Ct. 1697, 1701-03, [citation] (1964); People v. Ramey, 152 Ill.2d 41, 63, 178 Ill.Dec. 19, 604 N.E.2d 275 (1992). In Bouie the Supreme Court noted that "an unforeseeable judicial enlagement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, §10, of the Constitution forbids." Bouie, 378 U.S. at 353, [citation]. The Bouie Court held that, if a state legislature is barred from passing an ex post facto law, then a state supreme court must be barred by the due process clause from achieving the same result by judicial construction. Accordingly, under Bouie, if a judicial construction of a criminal statute is "'unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue,'" "it must not be applied retroactively." Bouie, 378 U.S. at 354 [citation], quoting J. Hall, General Principles of Criminal Law 61 (2ed. ed. 1960); See also Ramey, 152 Ill.2d at 64 [citation].

Certain types of judicial decisions may be considered "unexpected and indefensible." An example is a judicial decision that epansively interprets a narrow, precise statute. That decision could be unexpected and indefensible if the narrow statutory terms could have lulled potential defendants "into false sense of security." Bouie, 378 U.S. at 352. Judicial decisions can also be unexpected and indefensible when they overrule a precedent. See Marks v United States, 430 U.S. 188, 195, 97 S.Ct. 990 (1977) (holding that a new Supreme Court opinion overturning a previous standard was unforeseeable); Douglas v. Buder, 412 U.S. 430, 432, 93 S.Ct. 2199 (1973) (Unforeseeable application of that interpretaion...deprived petitioner of due process"); Lopez v. McCotter, 875 F.2d 273, 277-78 (10th Cir. 1989) (holding that a New Mexico court's decision to eliminate the bail bondsman's privilege was unforeseeable when the circumstances would not have foreshadowed a change in the law); Magwood v. Warden,

Alabama Dept. Corrections,664 F.3d 1340,1341-43(11thCir.2011) (Alabama death sentence violated fair-warning requirement of due process, as it was based in unforeseeable and retroactive judicial expansion on narrow and precise language of death penalty statutes; Provisions governing judge's written sentencing findings did not have corresponding aggravating circumstances for crime which defendant was convicted, murder of law enforcement officer, and defendant became "eligible" fro death penalty only, when Alabama Supreme Court incorrectly interpreted the statute to allow charge authorizing jury fix punishment to be used in liue of aggravating circumstances for purpose of judge's written sentencing findings.U.S.C.A. Const. Amend. 14.).

In this case, the appelllate court's decision effeectively ocnstitutes an unforeseeable and indefensible enlargement of or change of Illinois death penalty eligibility statutes by ex post facto judicial law making, because the appellate court's decision and rationaledoes not follow the language of the death penalty eligibility statutes, nor Il. Supreme Court's decisions interpreting the same. In that the prosecution was not required to prove "anew" the 9-1(b)(6) factor beyond a reasonable doubt, and the jury was not required to that the petitioner was the person that actually murdered the murdered individual...a ... necessary element of the statutory aggravating factor.See 720 ILCS 5/9-1(b)(6)(West 1994).

In other words, by Its ruling the appellate court interpreted the death penalty eligibility statutes in a manner that

allowed It to merge Its duty as Court of review with the role of finder-of-fact, and interpreted the death penalty eligibility statutes to allow It to effectively determine from Il. Supreme Court's first direct appeal decision, whether the murdered individual was killed by petitioner, an essential element of the 9-1(b)(6) factor in this case that the State was required to prove beyond a reasonable doubt.

Further, the appellate court interpreted the "general verdict form" evidence in a manner contrary to the statutes involved and Il. Supreme Court's construction of the "general verdict form evidence in that the court interpreted the evidence proved more than it reasonable could and reflected more than it legal could. See Ramey, supra. (citing cases). Moreover, under Illinois law a general verdict of guilt does not imply unanimity as to any one theory of first degree murder. Simms, 143 Ill.2d at 170. The general verdict form in this case does not imply unanimity as to any one theory because during the guilt phase the trial of the underlying offense, the jury was instructed as to intentional, knowing, and felony murder in the conjunctive. (R.1357-1358).

But also, the court's interpretation was contrary to Il. Supreme Court's decision in this case, where the Il. Supreme Court remanded for a new sentencing hearing, and determined that It could not and would not independently find whether the 9-1(b)(6) factor exist. See Williams, 193 Ill.2d at 44.

Further, the court's use of conclusions of matters of facts

by the Il. Supreme court of the first direct appeal, to find that the same was reflected in the "general verdict form" evidence and thus proved the 9-1(b)(6) factor, was not only novel and contrary to Illinois well-established law(See page 19, supra.), but also, violated petitioner's right to due process by effectively lowering or negating the State's burden of proving the elements that make-up the 9-1(b)(6) factor "anew" beyond a reasonable doubt.

Finally, the court's intepretation of the "general verdict form" evidence and resolution of petitions appeal is contrary to the purpose of the Statutes and Il. Supreme Court's interpretation of the same... Because, if Il. Supreme Court's determinations on matters of facts are reflected in the "general verdict form", then why remand for a new sentencing hearing in the first instance? Why cause a jury to be empanelled to find the existence of the statutory aggravating factor if the factor had already or could be found by Il. Supreme Court? Why does the Statute require the factor be found by a jury if a reviewing court could make the finding?

In other words, the Appellate Court's resolution of this claim is arbitrary and makes no sense in light of the Statutes involved and Illinois Supreme Court's decision in this case and in interpreting the Statutes involved, and led to various constitutional violations::One being the court invaded the province of the jurydenying petitioner a fair jury determinations, invaded the State's burder of proving the necessary factor,

and as described below, denied Petitioner due process and his right to be heard/adequate access to the court.

II.) IN DOING SO, THE APPELLATE COURT RE-WEIGHED THE "GENERAL VERDICT FORM" EVIDENCE IN A MANNER THAT DENIED PETITIONER DUE PROCESS-LIBERTY INTEREST IN HAVING THE JURY MAKE THE PARTICULAR FINDING OF THE 9-1(b)(6) STATUTORY AGGRAVATING FACTOR ON REASONABLE.

As argued at page 18-19, supra. the Statutes gave petitioner the liberty interest-due process right to have a jury make the requisite finding and the State to prove "anew" to the jury the statutory aggravating factor before he could be found eligible for a natural life sentence. Here, as explained above , the appellate court read so much into the "general verdict form" evidence that It assumed the jury's role as fact-finder. It read into the verdict form evidence information that the actually trier-of-facts (i.e, the Eligibility Jury) was not privy to (nor could be, that is, the jury could not have been presented with Il. Supreme Court's direct appeal decision and then asked to find the 9-1(b)(6) factor based on their determination of facts), so much so that the appellate court independently found the 9-1(b)(6) factor exist.

Consequently, Petitioner's liberty interest right to have a jury make the necessary finding and the State to prove the factor "anew" before he could be found eligible for a natural life sentence was violated in the appellate court's resolution of his sufficiency of evidence claim.See ILCS 5/5-8-1(a)(1)(b) (West 2004), together with 720 ILCS 5/9-1(c), (d), and (f)(West 1994);Hicks,447 U.S. at 346(1980);Ramey,151 Ill.2d at 546-48(Citing cases);Williams,193 Ill.2d at 44(citing cases);

Fuller,205 Ill.2d at 344-45(Citing case)(For the proposition that the State is required to prove a statutory aggravating "anew");People v. West,187 Ill.2d 418,445-469(1999)(same); Armstrong,183 Ill.2d 130,700 N.E.2d 960,976(1998)(citing federal case); 720 ILCS 5/9-1(d) and (f)(West 1994).

That is, by substituting Its own evaluation of the evidence , specifically the "general verdict form" evidence, for the findings of the eligibility jury, the appellate court denied petitioner his right to have the State prove the elements that make-up the 9-1(b)(6) factor "anew" and his right to have the jury determine the existence of the factor based on reasonable evidence. Accordingly, Petitioner was denied of his liberty interest-due process right to have the State prove and jury determine the existence of the 9-1(b)(6) factor beyond a reasonable doubt before he could be sentenced to a natural life sentence.

III.) THE APPELLATE COURT DENIED PETITIONER ADEQUATE ACCESS TO THE COURT, HIS DUE PROCESS RIGHT TO BE HEARD ON HIS SUFFICIENCY OF EVIDENCE CLAIM WHEN IT RULED PETITIONER COULD NOT CHALLENGE THE SUFFICIENCY OF THE "GENERAL VERDICT FORM" EVIDENCE USED TO PROVE THE EXISTENCE OF THE STATUTORY AGGRAVATING FACTOR TO MAKE HIM ELIGIBLE FOR A NATURAL LIFE SENTENCE.

Rather than address the arguments contained in Petitioner's sufficiency of evidence Claims raised in his appellate briefs based on Illinois long standing law as described herein(Refer to pages 9-12 supra.), the appellate court denied Petitioner his due process right to challenge the sufficiency of the "general verdict form" evidence to prove the existence of the 9-1(b)(6) factor.People v. Williams, Appeal No. 5-08-0459, Slip Op. at 14-15:

> "We agree with the State that defendant cannot now relitigate the issue of whether he was actually and intentionally the person who killed Bushong, nor can he claim that People's Exhibit 100, the guilt verdict , is not evidence of these facts."

As described above and foregoing, the State had the burden of proving the 9-1(b)(6) factor "anew", a fortiori, Petitioner had a due process right to challenge the sufficiency of the "general verdict form" evidence,See Jackson v. Virginia,443 U.S. 307,319 S.Ct. 2781(1979), based on proof beyond reasonable doubt standard.See 720 ILCS 5/9-1(d) and (f)(West 1994);730 ILCS 5/5-8-1(a)(1)(b)(West 2004);Swift, 202 Ill.2d at 17.

Under the due process clause of U.S.Const.14 Amendment, this Court has held, While "it is for the State courts to determine the abjective as well as the substantive law of the State, they must, in doing so, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."See Bouie, citing Brinkerhoff -Faris Trust & Sav. Co. v. Hill,281 U.S. 673,682,50 S.Ct. 451, 453(1930). This Court has determined that "[t]he fundamental requirement of due process in the opportunity to be heard "' at a meaningful time and in a meaningful manner."'See Matthews, v. Eldridge,424 U.S. 319,333,96 S.Ct. 893,902(1976).

Here, here the appellate court appears to have merged the findings during the guilt phase proceedings, with the eligibility

proceedings, but the appellate court errs significantly. According to the statutes involved and Illinois Supreme Court's interpretation of the same, the proceedings are separate and independent of one another because they address two very different questions. See People v. Brown, 169 Ill.2d 132, 160, 661 N.E.2d 287 (1996) (Under our death penalty [eligibility] statutes, the death sentence sentencing hearing is treated as a proceeding separate from the defendant's trial on guilt and innocence.); 720 ILCS 5/9-1(d)(west 1994). During the guilt phase the trier of fact had to determine whether the State satisfied Its burden of proving Petitioner guilt of the commission of the crime beyond a reasonable doubt. During the eligibility hearing, the trier of fact was concerned with determining whether the State proved the statutory aggravating factor beyond a reasonable doubt.

Here, by barring Petitioner's challenge to the "general verdict form" evidence the appellate court effectively denied Petitioner access to the court or an adequate-meaningful appellate review of his sufficiency of evidence claim or his right to be heard...Thereby denying Petitioner a remedy to protect his right to a jury determination on the issue of eligibility for a natural life sentence and his due process right to hold the State to their burden of proving the factor that made him eligible for the natural life sentence at issue here.

REASONS FOR GRANTING THE PETITION

Petitioner Bobby O. Williams seeks review of this appeal because as described above, he has been denied his right to be heard on appeal regarding the sufficiency of evidence Claim described above and foregoing. Further he seeks review of this appeal so that this Court can uphold U.S.C.A.Const.,art.I,10 together with the 14th Amendment Constitutional Rule It established in Bouie v. City of Columbia,378 U.S. 347,352-54 (1964), and Rogers v. Tennessee,532 U.S. 451,457-58(2001)-

If a judicial construction of a criminal statute is not justified by law which has been expressed prior to conduct involved , it must not be given retroactive effect.

He respectfully request this Court to accept this appeal and render an opinoin respecting due process with fundamental fairness and protect against vindictive or arbitrary judicial law-making by safeguarding Petitioner against unjustifiable and unpredictable breaks with prior law.

He also urges this Court to find that the appellate court independently found the existence of the statutory aggravating factor at issue here, which denied Mr.Williams various Constitutional Rights when It affirmed the natural life sentence imposed on him. Where the appellate court's resolution on the second direct appeal of this case, denied Mr.Williams: due process-right to fair warning as to the effect of Illinois Legislative enactments involved and right to rely on their meaning until explicitly changed; Due Process-Liberty Interest Rights ,as described herein, created by Illinois Statutes and Illinois

Supreme court construction of the same; Due Process-Right to be heard on appeal, to challenge the sufficiency of the "general verdict form" evidence; Sixth Amendment's Jury-Trial and Illinois Statutory guarantee that requires a jury determines the existence of the statutory aggravating factor described herein; and, Due Process-Liberty Interest Right to have the State prove the existence of such aggravating factor "anew" beyond a reasonable doubt....which substantially affected the punishment imposed on Mr.Willliams. He urges this Court to reverse and vacate the appallate court's affirmance of the natural life sentence imposed on him, and remand this case to the Illinois Supreme Court to review Petitioner's sufficiency of evidence Claim, as described herein the attached Mandamus Petition at pages 34-44.

Here, the State of Illinois, by way of Its Statutes and Illinois Supreme Court's decisions interpreting the same, **prior to the resolution of the appeal of Petitioner's natural life sentence**, afforded Mr.Williams: 1.) A jury finding of the existence of the statutory aggravating factor beyond a reasonable doubt, before he could be sentenced to natural life in prison, 730 ILCS 5/5-8-1(a)(1)(a)(and (b)(West 2004), with 720 ILCS 5/9-1(d),(f), and (g), Swift,202 Ill.2d 378(2002); 2.) Further afforded Mr.Williams **the right to** require the State to prove such statutory aggravating factor "anew" to the designated trier of fact in separate proceeding, See 720 ILCS 5/9-1(c)(West 1994) and Fuller,205 Ill.2d at 344-45(2002); 3.) Also, because Illinois

Statutes concerning first-degree murder contains several theories of first-degree murder, so that, conviction for the offense of first-degree murder does not have to be unanimous as to any one theory of the offense...See Simms,143 Ill.2d at 170(1991); Such theories of the offense do not have to be listed in the Indictment charging the offense, See People v. Doss,99 Ill.App.3d 1026,1029 and People v. Maxwell,148 Ill.2d 116,133-140(1992) or the verdict form, Simms; above and Ramey,151 at 540-42(1992); As a result, Illinois Supreme Court interpret a "general verdict form" of guilt of first-degree murder cannot reveal whether Mr.Williams was convicted of being the person that actually killed the murdered individual or theory of first-degree murder he was convicted of.

Accordingly, Mr.Williams urges this Court to accept this appeal and render an opinoin because the State of Illinois abridged the Privileges or Immunities Clause of the United States Constitution and Due Process Clause when It arbitrarily abrogated all of the rights described above via its judicial officer-the appellate court.See U.S.A.C.Const., Amend.14, §1 ("[n]o State shall make or enforce any law which shall 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 law");See Bell v. Maryland,378 U.S. 226,255-56, 84 S.Ct. 1814(1956), citing Shelley v. Kraemer,334 U.S. 1, 20,68 S.Ct. 836 (1948)(This Court reaffirming the principle that "State judicial action is as clearly "'state'" action as state administration

actions.")(citing cases)).

The appellate court, when resolving the claim on Mr.Williams second direct appeal, that evidence was insufficient-unreasonable to prove the existence of the 9-1(b)(6) factor, the court independently re-weighed the "general verdict form" evidence by finding that the verdict form reflected or encompassed conclusions of facts determined by the Illinois Supreme Court on his first direct appeal...facts never presented to the jury tasked with the duty of finding whether the 9-1(b)(6) factor existed.

In other words, the State of Illinois, via, Illinois appellate court independently found the 9-1(b)(6) factor existed , thereby abridging Mr.Williams Liberty Interest right- as announced in Hicks, where Illinois Statutes afforded Mr.Williams the privilege of a jury trial finding whether the 9-1(b)(6) factor exist:

Abridging Mr.Williams privileges/rights under the Sixth/ Fourteenth Amendment to a jury trial finding of a factor that enhances a sentence beyond the statutory maximum sentence that could otherwise be imposed for an offense, as announced in Apprendi and Blakely;

Abridging, Mr.Williams Liberty Interest right/privilege created by Illinois Statutes involved, to hold the State to their burden of proving the 9-1(b)(6) factor "anew", and the due process right to hold the State to their burden of proof as announced in Jackson and Ramos.Hicks,447 U.S. at 346(For the proposition that Statutes created liberty interest right to jury trial sentencing)- 730 ILCS 5/5-8-1(a)(1)(b)(West 2004)

,with 720 ILCS 5/9-1(d),(f), and (g)(West 1994)(Statutory right to a jury trial of the finding of the 9-1(b)(6) factor);Apprendi v. New Jersey,530 U.S. 466,120 S.Ct. 2348(2000) and Blakely v. Washington,542 U.S. 296,124 S.Ct. 2531(2004)(Constitutional right to a jury trial regarding sentencing enhancement factors based of factors not reflected in the verdict of the offense); Fuller,205 Ill.2d at 344-45, with 720 ILCS 5/9-1(f)(West 1994) (State burden "anew" with proving the Sentencing enhacement factor);Jackson v. Virginia,443 U.S. 307,319 S.Ct. 2781(1979) (The State has the burden of proof under the reasonable doubt Standard), with Ramos v. Louisiana,140 S.Ct. 1390,1409,206 L.Ed.2d 583(2020)(Justice Sotomayor, concurring as to all but Part IV-A)("...the constitutional protection here ranks among the most essential: the right to put the State to its burden, in a jury trial that comports with the Sixth Amendment, before facing criminal punishment.")(citing case)).

In light of the foregoing, Mr. Williams urges this Court to accept this appeal and render an opinion because Illinois State Court (-the appellate court's decision at issue here) has decided important federal questions in a way that conflicts with relevant decisions of this Court.U.S.C.S. Supreme Court rule 10(c).

As described above and foregoing, Illinois appellate court's decision conflicts with the rationale and determinations of several relevant decisions of this Court; 1.) The decision conflicts with this Courts rationale/decisions in Douglas,

Marks, Bouie, and Rogers(Refer to pages 21-26, supra)- when it retroactively applied an unexpected and indefensible construction to the statutes involved, that denied Petitioner due process; 2.) The decision conflicts with this Court's decision in Hicks (Refer to pages 27-28, supra)- by independently re-weighing the evidence thus independently finding the 9-1(b)(6) factor denying Mr.Williams Statute created liberty interest right to have the jury find the factor based on evidence presented to it; and by subverting his Statute created right to have the State prove the factor "anew"; 3.) The decision conflicts with this Court's decision in Jackson (Refer to page 29, supra.) - by failing to meaningfully or adequately consider Mr.Williams sufficiency of evidence claim based on the proper standard of review; 4.) The decision conflicts with this Court's decisions in Brinkerhoff and rationale in Matthews- by subverting Mr. Williams right to be heard on whether the "general verdict form" evidence was sufficient to prove the existence of the 9-1(b)(6) factor; and, 5.) It conflicts with this Court's decisions in Apprendi and Blakely (Refer to page 35, supra.)- By re-weighing the evidence the court independently found the 9-1(b)(6) factor thereby invading the province of the jury in order to salvage a sentence-natural life imprisonment that is beyond the statutory maximum 60 years imprisonment for the offense of first-degree murder.

For these reasons, Bobby O. Williams respectfully request this Court to accept this appeal, grant him the modest relief of vacating the appellate court's affirmance of the natural life sentnece imposed on him, and remand to Illinois Supreme Court so that he can present his sufficiency of evidence claim. He ask this Court to uphold the rights of defendent's to a jury trial determination on a factor that allows a defendant to be sentenced beyond the statutory maximum sentence that he otherwise faced. He ask this Court to uphold the rights of defendants to be heard on appeal and have meaningful or adequate appellate review-access to the court on their sufficiency of evidence claims. He ask this Court to grant any and all relief necessary to ensure fundamental fairness and due process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bobby Q. Williams

Date: February 23, 2023