No. 23-5565

In The
Supreme Court of the United States

WILLIAM E. WELLS, III,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Capital Case

QUESTIONS PRESENTED

I. Whether the Florida Supreme Court abolishing proportionality review in capital cases violates the Eighth Amendment or *Pulley v. Harris*, 465 U.S. 37 (1984).

II. Whether this court should grant review of a decision of the Florida Supreme Court rejecting a claim that Due Process requires that all findings related to capital sentencing be at the beyond a reasonable doubt standard of proof.

III. Whether Florida's capital sentencing complies with this court's narrow holding in *Atkins v. Virginia*, 536 U.S. 304 (2002), exempting intellectually disabled defendants from the death penalty.

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The Florida Supreme Court's Opinion is reported at Wells v. State, 364 So. 3d 1005 (Fla. 2023).

STATEMENT OF JURISDICTION

On April 13, 2023, the Florida Supreme Court affirmed Wells' death sentence. On May 1, 2023, Wells filed a motion for rehearing that was denied on June 12, 2023, by the Florida Supreme Court. On September 11, 2023, Wells filed a petition for writ of certiorari in this Court. Wells asserts this Court's jurisdiction is based upon 28 U.S.C. § 1257(a). Respondent acknowledges that § 1257 sets out the scope of this Court's certiorari jurisdiction but submits that this case is inappropriate for the exercise of the Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: No person shall...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his

favor, and to have the Assistance of Counsel for his defense. U.S. Const. amend. VI.

The Eighth Amendment to the United States Constitution provides: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const. amend. VIII.

The Fourteenth Amendment to the United States Constitution provides in relevant part: 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; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV.

Section 2254(d), United States Code, provides:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
>
> (1) 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; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The petition seeks review of a decision of the Florida Supreme Court affirming a death sentence.

Facts of the murders

At the time of the murder in question, Wells was serving seven consecutive life sentences - six for murder, and one for attempted premeditated murder. On July 15, 2019, Wells and inmate Leo Boatman, murdered William Chapman, a fellow prison inmate. Wells and Boatman began planning the murder at least a month in advance, in hopes to obtain better living conditions on death row. *Wells v. State*, 364 So. 3d 1005, 1008 (Fla. 2023).

Chapman was targeted because Wells believed Chapman intended to recruit him for sexual favors. So, in preparation of the murder, Wells and Boatman obtained two ten-inch metal shanks, sharpened them over a course of days, and then hid them near the dayroom. In addition, Wells used his sheets and pillowcase to create ligatures to be used during the attack. *Wells*, 364 So. 3d at 1008.

On the day of the murder, Wells, Boatman, and Chapman were in the dayroom that was equipped with a surveillance camera. Prior to the attack, Boatman left the dayroom to walk to the bathroom and, upon his return, Wells did the same. "Once Wells returned, Boatman approached Chapman, spoke to him, and the two walked to an area of the room in the camera's blind spot." *Id.* Wells then removed a ligature that he had concealed and joined Boatman and Chapman and wrapped the ligature around Chapman's neck and began choking him. *Id.*

Chapman struggled to break free, and Boatman began punching him. Boatman

moved in front of the only door to the dayroom, anticipating that corrections officers would soon try to intervene, blocked it with his foot, and brandished the two shanks. *Id.* The corrections officers attempted to enter the room and Boatman threatened that he would kill them if they entered. *Id.*

Wells dragged Chapman over toward the door as he struggled to breathe. "Chapman pled for his life, begging: Please don't kill me." *Id.* Boatman stabbed Chapman in the eyes with the shanks. The corrections officers were able to get the door open enough to deploy a chemical agent into the room and it had no effect on Wells and Boatman who continued their assault on Chapman. Chapman managed to get his fingers in the gap between the door and the frame, but the officers were still unable to open the door. *Id.*

Boatman handed Wells a shank, which Wells used to forcefully stab Chapman in his back. As Chapman lie face down on the floor, offering no resistance, Wells urged Boatman to keep stabbing him. *Wells*, 364 So. 3d at 1008. Wells tied the door handle to the nearest bench that was bolted to the floor to prevent entry into the dayroom because Wells wanted to ensure they killed Chapman before the officers could enter. Wells and Boatman continued beating and stabbing Chapman and "toward the end of the twelve-minute assault, Boatman plunged a shank into Chapman's neck and stomped on it with such force that the shank went completely through Chapman's neck and bent under the pressure of being driven into the floor." *Id.* Chapman died shortly after the attack due to his extensive injuries. *Id.*

Proceedings

On November 4, 2019, Wells was indicted by the grand jury for premeditated first degree murder, and possession of a weapon by a state prisoner. On November 7, 2019, Wells filed a motion for self-representation, indicating that he was aware the maximum penalty for which he was being charged was death. Simultaneously, Wells filed a motion to waive a jury trial and proceed with the penalty phase as a bench trial. On November 19, 2019, the court ordered the appointment of an expert for a competency evaluation of Wells before ruling on the motions. Wells was found competent to stand trial. *Id.* at 1009.

On November 27, 2019, the State filed its notice of intent to seek the death penalty pursuant to Florida Statute 921.141(6) citing four aggravators: 1) The capital felony was committed while the defendant was previously convicted of a felony and under sentence of imprisonment; 2) the capital felony was committed while the defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to another person; 3) the capital felony was especially heinous, atrocious, or cruel; and 4) the capital felony was committed in a cold, calculated, and premeditated manner without any pretense or moral obligation or legal justification.

The court conducted a thorough *Faretta*[1] inquiry, and upon completion, granted Wells' motion for self-representation but appointed regional counsel to function as standby counsel, and accepted his plea to the weapons possession charge.

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[1] *Faretta v. California*, 422 U.S. 806 (1975).

Wells, 364 So. 3d at 1009. Wells changed his mind about representation and the court appointed regional counsel. Two months later he requested to proceed pro se again, and after a second *Faretta* inquiry, the court granted his request. After the inquiry, Wells informed the court that he wanted to plead guilty to the first-degree murder charge and again requested to waive a penalty phase jury and not present any mitigation evidence. *Id.*

Penalty Phase

In arguing for the death penalty, the State relied on four statutory aggravating factors, contending that they outweighed any established mitigating circumstances. *Id.* at 1011. During the State's case, it introduced several exhibits, including: (1) surveillance videos of Chapman's murder, (2) a video of Wells' initial comments, (3) a recording of Wells' interview with law enforcement agents, and (4) the medical examiner's report showing Chapman's manner and cause of death. *Id.* at 1005. Wells asked the court to find 96 mitigators, including some specified in Florida's death-penalty statute, *see* § 921.141(7), Fla. Stat. (2021) (listing seven specific mitigators and one catchall provision). *Wells*, 364 So. 3d at 1011.

The court found the State had proven beyond a reasonable doubt four aggravating factors: "Wells committed the capital felony after previously being convicted of a felony and under the sentence of imprisonment (great weight); Wells was previously convicted of another capital felony or a felony involving the use or threat of violence (very great weight); the murder was especially heinous, atrocious, or cruel (HAC) (great weight); and Wells committed the murder in a cold, calculated,

and premeditated manner (CCP) (great weight)," and sentenced Wells to death. *Id.* at 1011–12.

Direct Appeal

Wells filed a notice of appeal on July 1, 2021. After a few extensions and briefings, oral arguments were held on August 31, 2022. The Florida Supreme Court affirmed the sentence and conviction on April 13, 2023. Wells filed a motion for rehearing that was denied on June 12, 2023. The mandate was issued on June 28, 2023.

On September 11, 2023, Wells, represented by the Public Defender of the Second Judicial Circuit of Florida, filed a petition for a writ of certiorari in this Court.

REASONS FOR DENYING THE WRIT

I. Whether the Florida Supreme Court abolishing proportionality review in capital cases violates the Eighth Amendment or *Pulley v. Harris*, 465 U.S. 37 (1984).

Petitioner Wells asserts that the Florida Supreme Court's decision in this case violates the Eighth Amendment because the Florida legislature and courts have increased the breadth and number of aggravating factors as well as eliminating proportionality review in capital cases. (Pet. at 7). There is no conflict between this Court's Eighth Amendment jurisprudence and the Florida Supreme Court's decision in this case finding comparative proportionality incompatible with the conformity clause in Article I, Section 17 of Florida's Constitution. *Wells*, 364 So. 3d at 1015. This Court in *Pulley v. Harris*, 465 U.S. 37, 45 (1984) found that proportionality review is

not a constitutional requirement. The Eighth Amendment does not require proportionality review regardless of the number of statutory aggravating factors in Florida's death penalty statute. This Court should deny review.[2]

Florida Supreme Court Decision

On direct appeal, Wells argued that Florida's death penalty statute is facially unconstitutional under the Eighth Amendment stemming from the sheer number of aggravating factors in the statute combined with the Florida Supreme Court's holding in *Lawrence v. State*, 308 So. 3d 544, 552 (Fla. 2020) (finding comparative proportionality incompatible with conformity clause in article I, section 17 of Florida's Constitution). *Wells*, 364 So. 3d at 1015. The court recognized that comparative proportionality review was not an integral component of the Eighth Amendment. (citing *Lawrence v.* State, 308 So. 3d at 548-50, 552.) *Id.* The court also noted that Wells provided no pre-or post-*Lawrence* case law undermining the court's position.

No Conflict with this Court's Sixth and Eighth Amendment Jurisprudence

There is no conflict between the Florida Supreme Court's decision in this case and this Court's Sixth and Eighth Amendment jurisprudence. Sup. Ct. R. 10(c) (listing conflict with this Court as a consideration in the decision to grant review). This Court in *Pulley v. Harris* held the Eighth Amendment does not require proportionality review and the California scheme for imposition of the death penalty is not rendered unconstitutional by absence of provision for proportionality review.

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[2] This Court declined to review the Florida Supreme Court decision abrogating proportionality review in *Lawrence v. Florida*, 142 S. Ct. 188 (2021).

Pulley v. Harris, 465 U.S. 37 (1984). Harris was convicted of a capital crime in a California court and was sentenced to death. *Id.* at 38. In his appeals to the California Supreme Court and his federal habeas petition, Harris argued that California's death penalty statute violated the Eighth Amendment for failure to require the court to compare Harris's sentence with the sentences imposed in similar capital cases and thereby to determine whether they were proportionate. *Id.* at 39–40.

The Court in *Pulley* explained that traditionally, "proportionality" has been used with reference to an abstract evaluation of the appropriateness of a sentence for a particular crime by looking at the gravity of the offense and the severity of the penalty, to sentences imposed for other crimes. *Pulley*, 465 U.S. 37 at 42–43. However, the review sought by Harris inquired whether the penalty is unacceptable in a particular case because it is disproportionate to the punishment imposed on others convicted of the same crime. *Id.* at 43. Harris's argument relied mainly on *Furman v. Georgia,* 408 U.S. 238 (1972), and *Zant v. Stephens,* 462 U.S. 862 (1983), to support his position that the constitution mandates proportionality review in capital cases but this Court rejected Harris's interpretation in both cases and went on to discuss several other capital cases whose emphasis was on the constitutionally necessary narrowing function of statutory aggravating circumstances. *Pulley*, 465 U.S. at 50. This Court found that proportionality review was "an additional safeguard against arbitrarily imposed death sentences, but we certainly did not hold that comparative review was constitutionally required." *Pulley*, 465 U.S. at 50. The Court observed that to hold that the Eighth Amendment mandates proportionality review

would require the Court to effectively overrule *Jurek v. Texas*, 428 U.S. 262 (1976) and would substantially depart from the sense of *Gregg v. Georgia*, 42.S. 153, 187 (1976) and *Proffitt v. Florida*, 428 U.S. 242 (1976). *Pulley*, 465 U.S. at 51.

Wells, however, relies upon *Maynard v. Cartwright*, 486 U.S. 356 (1988). (Pet. at 7). But *Maynard* was a due process vagueness challenge to Oklahoma's heinous, atrocious, and cruel (HAC) aggravating factor, not an Eighth Amendment proportionality review case. *Maynard* certainly did not overrule *Pulley v. Harris*. Indeed, the *Maynard* Court did not even cite *Pulley v. Harris*. Wells also relies on *Godfrey v. Georgia*, where the Court found Georgia's capital sentencing statutory aggravating circumstance so broad and vague that it violated the Eighth Amendment. *Godfrey v. Georgia*, 446 U.S. 420 (1980). However, the present case is not about the vagueness of the statute but about the elimination of proportionality review which is not required by the Eighth Amendment.

This Court noted that proportionality review in capital cases was required by "numerous state statutes." *Pulley*, 465 U.S. at 43 & n.7. This Court also noted that in the states whose death penalty statute did not require proportionality review, some states, such as Florida, the appellate court performs proportionality review despite the absence of a statutory requirement, while in other states, such as California and Texas, the appellate courts did not perform proportionality review. *Pulley*, 465 U.S. at 44. In a footnote, the *Pulley* majority discussed the Florida Supreme Court's proportionality review. *Id.* at 46 n.8. This Court stated that, while some states provide proportionality review, that "does not mean that such review is indispensable." *Id.* at

45. *See also Murray v. Giarratano*, 492 U.S. 1, 19 (1989); *Lewis v. Jeffers*, 497 U.S. 764, 779 (1990).

In *McKinney v. Arizona*, 140 S. Ct. 702 (2020) this Court reaffirmed *Clemons v. Mississippi*, 494 U.S. 738 (1990). McKinney argued that under *Ring v. Arizona*, 536 U.S. 584 (2002), and *Hurst v. Florida*, 577 U.S. 92 (2016), the jury was required to weigh the aggravation against the mitigation. The *McKinney* Court rejected that argument explaining that the Sixth Amendment only requires that the jury in a capital case find the one aggravator that makes the defendant eligible for the death penalty, not that the jury perform the weighing. *Id.* at 707. This Court stated that "a defendant convicted of murder is eligible for a death sentence if at least one aggravating circumstance is found." *McKinney*, 140 S. Ct. at 705-06 (citing *Tuilaepa v. California*, 512 U.S. 967 (1994), *Zant v. Stephens*, 462 U.S. 862 (1983), and *Gregg v. Georgia*, 428 U.S. 153 (1976)). So, under the reasoning of *McKinney*, an aggravating factor, by itself, is enough to warrant a death sentence.

There is no conflict between this Court's decision in *Pulley v. Harris* and the Florida Supreme Court's decision in this case.

Equal Protection and Proportionality Review in Capital Cases

Wells is not actually asserting in his petition that this Court should recede from *Pulley v. Harris*. Rather, his assertion is that when a state has a "myriad" of aggravating factors in its death penalty statute, those particular states are required to have proportionality review as an additional safeguard against arbitrariness. (Pet. at 7-10). He claims that the Eighth Amendment requires "some other check" on

arbitrariness, such as proportionality review, in those states that fall into the category of having "too many" aggravators, including Florida.

But this Court has explained that a death penalty statute that limits the number of death-eligible crimes, requires bifurcated proceedings, and demands proof of at least one aggravating factor, gives the jury broad discretion to consider mitigating circumstances, and provides the jury with standards to guide its use of aggravating and mitigating information, is sufficient to minimize "the risk of wholly arbitrary, capricious, or freakish" death sentences. *Pulley*, 465 U.S. at 45 (discussing *Gregg*, 428 U.S. at 197-98). Florida's death penalty system does all those things and more.

Florida limits the death penalty as a possible penalty for first-degree murder which encompasses both premeditated murder and felony murder, but the murder statute limits the underlying felonies § 782.04(1)(a), Fla. Stat. (2021); *Foster v. State*, 258 So. 3d 1248, 1252 (Fla. 2018) (explaining capital murder in Florida). Florida, by case law, has trifurcated proceedings, not merely bifurcated proceedings. Florida has a guilt phase and a penalty phase in front of the jury as is typical of capital trials, but then Florida has another bench penalty phase where the defendant can present sensitive mitigation, such as illegal drug abuse, to the judge alone. *Spencer v. State*, 615 So. 2d 688 (Fla. 1993). Most importantly and unlike many other state's death penalty statutes, Florida's death penalty statute is jury sentencing plus judge sentencing. § 921.141, Fla. Stat. (2021); Under the death penalty statute, amended by the Florida Legislature in the wake of *Hurst*, a Florida capital jury must find each

aggravating factor unanimously. § 921.141(2)(b)(2), Fla. Stat. (2021). The judge is bound by the jury's findings regarding the aggravating factors. § 921.141(3)(a), Fla. Stat. (2021) ("The court may consider only an aggravating factor that was unanimously found to exist by the jury."). If the jury does not "unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death." § 921.141(2)(b)(1), Fla. Stat. (2021). And under Florida case law, the prosecution is limited to statutory aggravating factors and may not present non-statutory aggravating factors. *Oyola v. State*, 158 So. 3d 504, 509-10, 513 (Fla. 2015) (reversing because the trial court improperly relied on non-statutory aggravation which "cannot be harmless" under Florida law and remanding for a new penalty phase).[3] But there is no limit on the type of mitigating circumstances that a defendant may present under the "catch-all" statutory mitigating circumstance. § 921.141(7)(h), Fla. Stat. (2021) ("the existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty"). The jury then finds mitigating circumstances and whether the aggravation "outweighs" the mitigation before making a sentencing recommendation to the judge. § 921.141(2)(b)(2), Fla. Stat. (2021). Under the statute the jury's findings regarding the aggravation are binding

[3] The FDPA allows the prosecution to present non statutory aggravating factors, unlike Florida's scheme. *United States v. Jones*, 132 F.3d 232, 240 (5th Cir. 1998) (rejecting a constitutional attack on the FDPA based on a combination of lack of proportionality and the prosecution being allowed to use and define non statutory aggravation and concluding that the FDPA is not so lacking in other checks on arbitrariness that it fails to pass constitutional muster for lack of proportionality review). In effect, the FDPA allows a limitless number of aggravators and certainly far more than Florida's statutory aggravators.

on the trial court but the jury's findings regarding mitigation are not. A jury can reject all the mitigation, but the trial court is free to disagree with the jury's assessment and find mitigation that was rejected by the jury. At the time of Wells' sentencing, a recommendation of death from the jury must be unanimous § 921.141(2)(c), Fla. Stat. (2021). A Florida jury's recommendation of a life sentence is binding on the judge, but the jury's recommendation of a death sentence is not. § 921.141(3)(a)1, Fla. Stat. (2021) (stating that if the jury recommends a life sentence, "the court shall impose the recommended sentence"). However, a Florida trial judge is free to disagree with the jury's death recommendation and impose a life sentence. The jury has the last word on a life sentence but not on a death sentence. As is clear from this description, Florida's death penalty statute has better safeguards against arbitrariness than proportionality review. *United States v. Jones*, 132 F. 3d 232, 240 (5th Cir. 1998) (upholding the constitutionality of the FDPA regarding proportionality review on similar grounds).

Under Florida's death penalty statute, a Florida capital defendant gets a second opportunity for a life sentence from the judge. A Florida judge is free to disagree with the jury provided it benefits the defendant. A Florida capital defendant gets all the benefits of either actor's findings in his favor. It is hard to see how such a statute could possibly violate the Eighth Amendment, regardless of how the Eighth Amendment is interpreted. In addition, Wells cannot meet the burden of an equal protection challenge because he cannot establish that he is being treated differently than defendants similarly situated. *Engquist v. Oregon Dept. of Agric.*, 553 U.S. 591,

602 (2008).

In addition, the trial court found the state had proven beyond a reasonable doubt, four aggravators: convicted of a felony and under the sentence of imprisonment; previously convicted of another capital felony or a felony involving the use or threat of violence;[4] the murder was especially heinous, atrocious, or cruel (HAC); and Wells committed the murder in a cold, calculated, and premeditated manner (CCP). Wells' aggravators were more than sufficient to show that this murder was one of the most aggravated.

Given this Court's clear directive that proportionality review of capital cases is not required by the Eighth Amendment, there is no basis for granting certiorari review of this issue.

II. Whether this Court should grant review of a decision of the Florida Supreme Court rejecting a claim that due process requires that all findings related to capital sentencing be at the beyond a reasonable doubt standard of proof.

Petitioner Wells seeks review of the Florida Supreme Court's decision rejecting a claim that due process requires additional determinations to be made beyond a reasonable doubt standard of proof before the sentencer can choose to impose the death penalty. (Pet. at 19). Wells also incorrectly misconstrues sentencing aggravating and mitigating factors as functional elements of the crime. (Pet. at 11, 19). In addition, Wells waived his right to a jury trial, pleaded guilty and requested a bench trial for the penalty phase. Thus, even assuming Wells has raised a colorable

[4] Wells was serving consecutive life sentences for six murders at the time of this murder.

constitutional claim, this is not the case to address it. The answer to any constitutional question on the jury's role would be largely, if not entirely moot under the posture of this case.

The Florida Supreme Court's interpretation of the death penalty statute is solely a matter of state law. This Court is bound by a state court's reading of a state statute. Alternatively, there is no conflict between this Court's Sixth Amendment or due process jurisprudence and the Florida Supreme Court's decision in this case. As this Court has explained, many of these additional determinations, such as sufficiency and weighing, are not even factual determinations. Weighing, for example, is a "question of mercy" rather than a factual determination. *Kansas v. Carr*, 577 U.S. 108, 119 (2016). Standards of proof do not apply to such determinations. *Id.* at 119. Furthermore, the view that all factual determinations must be made by the jury is contrary to this Court's decision in *Alleyne v. United States*, 570 U.S. 99 (2013). The *Alleyne* Court explained that it is only factual determinations that increase or "aggravate" the sentence that must be made by the jury; additional determinations within the already increased sentencing range may be made by the judge alone. *Alleyne*, at 107. As this Court recently explained in *McKinney v. Arizona*, 140 S. Ct. 702 (2020), in capital cases, under most state sentencing schemes, the fact that increases the sentence to a death sentence is the finding of one aggravating factor and therefore, it is only the finding of that one fact that constitutionally must be made by the jury. *McKinney*, 140 S. Ct. at 707.

Not surprisingly, this Court has repeatedly denied review of similar challenges

to the role of the jury in weighing and recommending death in Florida post-*Hurst.*[5] This Court reiterated in *Ring* and *Hurst*, that a jury must find the aggravating circumstance that makes the defendant death eligible, but the jury is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range. *Id.* The Florida Supreme Court's holding in *State v. Poole*, 297 So. 3d 487, 505 (Fla. 2020) that the state's death penalty statute only requires a jury finding of one aggravating factor at the beyond a reasonable doubt standard for a Florida capital defendant to be eligible for a death sentence exactly mirrors this Court's reasoning in *McKinney*. There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Therefore, review of this issue should be denied.

The Florida Supreme Court's Decision in this Case

On direct appeal, Wells argued that the trial court committed fundamental error by failing to find sufficient aggravators were found beyond a reasonable doubt and outweighed the mitigating factors to warrant the death penalty. *Wells*, 364 So. 3d at 1014. Wells' argument is based on the premise that the sufficiency and weighing determinations called for by § 921.141, Fla. Stat. (2021), are elements of the crime of

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[5] *Randolph v. Florida,* 142 S. Ct. 905 (2022); *Craft v. Florida,* 142 S. Ct. 490 (2021); *Doty v. Florida,* 142 S. Ct. 449 (2021); *Wright v. Florida,* 142 S. Ct. 403 (2021); *Craven v. Florida,* 142 S. Ct. 199 (2021); *Santiago-Gonzalez v. Florida,* 141 S. Ct. 2828 (2021); *Bright v. Florida,* 141 S. Ct 1697 (2021); *Newberry v. Florida,* 141 S. Ct. 625 (2020); *Rogers v. Florida,* 141 S. Ct. 284 (2020). This Court has also denied certiorari review in a case presenting the underlying question of whether the Sixth and Eighth Amendments require that a jury find that the aggravators outweighed the mitigators. *See Poole v. Florida,* 141 S. Ct. 1051 (2021).

capital murder and, as a result, require proof beyond a reasonable doubt. *Id.* However, the Florida Supreme Court has consistently rejected that argument holding that neither sufficiency nor weighing determination is subject to the reasonable doubt standard. *Id. See State v. Poole,* 297 So. 3d at 502-03 (Fla. 2020); *Devineу v. State,* 322 So. 3d 563, 572 (Fla. 2021); *Bell v. State,* 336 So. 3d 211, 217-18 (Fla. 2022). The Florida Supreme Court went on to note that although the trial court did not specifically state that the four factors were "sufficient ... to warrant the death penalty," the sentencing order contained findings that all four aggravating factors were proven beyond a reasonable doubt. *Wells,* 364 So. 3d at 1015. The court went on to note that "even if sufficiency in section 921.141(4) has a qualitative component, the court's finding that the four aggravating factors "far outweigh[ed]" the mitigating circumstances—coupled with the particular aggravators found and the weight individually assigned to them—necessarily implied that the court found the aggravating circumstances to be sufficient in a qualitative sense to warrant the death penalty in this case." *Id.* The Florida Supreme Court found that Wells' argument lacked merit and was inconsistent with case law and denied relief.

Florida's Death Penalty Statute

Florida 's death penalty statute § 921.141, Fla. Stat. (2021) reads in part as follows:

> **1) Separate proceedings on issue of penalty.** –Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082... If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant.

2) Findings and recommended sentence by the jury. –This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

(3) Imposition of sentence of life imprisonment or death. –

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence of life.

2. Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

(b) If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one

aggravating factor has been proven to exist beyond a reasonable doubt.

The explicit text of Florida's death penalty statute provides that a Florida capital defendant is "eligible" for a death sentence if the penalty phase jury unanimously finds "at least one aggravating factor." § 921.141(2)(b)(2), Fla. Stat. (2021). The Florida Supreme Court has read the state's death penalty statute to require only that the jury find one aggravating factor unanimously at the beyond a reasonable doubt standard of proof for a Florida capital defendant to be eligible for the death penalty. *State v. Poole*, 297 So. 3d 487, 505 (Fla. 2020); *cert denied, Poole v. Florida,* 141 S. Ct. 1051 (2021); *McKenzie v. State*, 333 So. 3d 1098, 1105 (Fla.) (declining to revisit what was settled in *State v. Poole* which was "only the existence of a statutory aggravating factor must be found beyond a reasonable doubt"), *cert. denied, McKenzie v. Florida,* 143 S. Ct. 230 (2022). The Florida Supreme Court has also interpreted the statutory phrase "whether sufficient aggravating factors exist," to mean "one or more" aggravators. *Poole*, 297 So. 3d at 502 (citing § 921.141(3)(a), Fla. Stat. and quoting prior cases).

Interpretation of a State Statute is a Matter of State Law

This Court lacks jurisdiction over issues that do not present federal questions. 28 U.S.C. § 1257; *Johnson v. Williams*, 568 U.S. 289, 309 (2013) (Scalia, J., concurring) (noting that 28 U.S.C. § 1257 imposes a federal-question requirement as a condition of this Court's appellate jurisdiction). The interpretation of a state statute by a state court is a matter of state law, not a matter of federal constitutional law. *Johnson v. United States*, 559 U.S. 133, 138 (2010) (stating we are "bound by the

Florida Supreme Court's interpretation of state law" including its determination of the elements of a state statute citing *Johnson v. Fankell*, 520 U.S. 911, 916 (1997); *Schad v. Arizona*, 501 U.S. 624, 636 (1991) (stating: "we are not free to substitute our own interpretations of state statutes for those of a State's courts"); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (stating that state courts are the ultimate expositors of state law and that "we are bound by their constructions except in extreme circumstances").

Whether Florida's death penalty statute requires the jury to make additional sentencing determinations, such as sufficiency of the aggravators and weighing, is solely a matter of state law, already definitively and finally decided by the Florida Supreme Court adversely to the petitioner's position in *State v. Poole*. The Florida Supreme Court has held that only the aggravating factors must be found beyond a reasonable doubt and this Court is not free to disagree. While this Court can declare the statute, as interpreted by the state courts, unconstitutional, this Court is not free to read a state statute differently from the state's highest court. There is no underlying federal question presented and therefore, certiorari should be denied.

No Conflict with this Court's Jurisprudence

There is no conflict between this Court's due process jurisprudence and the Florida Supreme Court's decision in this case. Regarding the standard of proof in connection with mitigation and weighing, this Court has noted that many mitigating circumstances, such a mercy, "simply" are not factual determinations. *Kansas v. Carr*, 577 U.S. 108, 121 (2016). This Court also observed that mitigation is "largely a

judgment call" or "perhaps a value call" rather *than purely a factual determination. Carr*, 577 U.S. at 119. This Court additionally observed that the ultimate question of whether mitigating circumstances outweigh aggravating circumstances "is mostly a question of mercy" and it would" mean nothing" to tell the jury that the defendants must deserve mercy beyond a reasonable doubt. *Id.* at 119. The *Carr* Court observed that jury instructions on the burden-of-proof regarding such determinations would only produce jury confusion. *Carr*, 577 U.S. at 119. This Court's view is that, in the last analysis, "jurors will accord mercy if they deem it appropriate and withhold mercy if they do not." *Id.* Because sufficiency and weighing are not factual determinations, no standard of proof applies to those determinations.

Regarding the Sixth Amendment, this Court recently explained in *McKinney v. Arizona*, 140 S. Ct. 702 (2020), that the right-to-a-jury trial provision only requires jury findings regarding the aggravating circumstance, not weighing. This Court stated that capital defendants are entitled to "a jury determination of any fact on which the legislature conditions an increase in their maximum punishment, in particular, the finding of an aggravating circumstance." *McKinney*, 140 S. Ct. at 707. But this Court also explained that defendants are not constitutionally entitled to a jury determination of weighing or to a jury determination of the "ultimate sentencing decision." *Id.* "States that leave the ultimate life-or-death decision to the judge may continue to do so." *McKinney*, 140 S. Ct. at 708. Neither *Ring v. Arizona*, 536 U.S. 584 (2002) nor *Hurst v. Florida*, 577 U.S. 92 (2016), require jury weighing of the aggravation against the mitigation. *Id.* at 708. Constitutionally, judges may perform

the weighing function, including appellate judges. Indeed, the basic holding of *McKinney* was to reaffirm the concept of appellate reweighing, established in *Clemons v. Mississippi,* 494 U.S. 738 (1990), which permitted reviewing courts to reweigh the aggravation against the mitigation. *Id.* at 709. There is no conflict between this Court's decision in *McKinney* and the Florida Supreme Court's decision in *State v. Poole,* because the Florida Supreme Court's reasoning in *State v. Poole* mirrors this Court's reasoning in *McKinney*.

Wells insists that *Apprendi*[6] and *Alleyne* applies in this case under the misguided belief that the determination of the sentence of life or death is an element exposing a defendant to a greater penalty than that authorized by statute. (Pet. at 14). However, Wells insistence that all additional determinations required for a jury to recommend a death sentence must also be made by the jury is contrary to this Court's decision in *Alleyne v. United States,* 570 U.S. 99 (2013) despite Wells' reliance on the case. The *Alleyne* Court explained that the "touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged offense." *Alleyne*, 570 U.S. at 107. When a finding of fact "aggravates" the punishment, that fact necessarily forms a constituent part of a new offense and must be found by the jury. *Id.* at 114-15. If the aggravating fact produces a higher range of punishment, that "conclusively indicates that the fact is an element" of the aggravated crime and the Sixth Amendment requires it be submitted to the jury and found beyond a reasonable

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[6] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

doubt. *Id.* at 116. The *Alleyne* Court held that a jury "must find any facts that increase either the statutory maximum or minimum" but also observed that additional factual determinations within the range may be made by the judge. The *Alleyne* Court specifically noted that its holding "does not mean that any fact that influences judicial discretion must be found by a jury." *Id.* at 116. Rather, it stated that this Court has long recognized, and continues to recognize, that judicial fact-finding related to sentencing "does not violate the Sixth Amendment." *Alleyne*, 570 U.S. at 116 (*citing Dillon v. United States*, 560 U.S. 817, 828 (2010)). Judges may still make factual findings to select a punishment within limits fixed by law and, while such fact finding may lead the judge to select a sentence that is more severe, "the Sixth Amendment does not govern" that aspect of sentencing. *Alleyne*, 570 U.S. at 113, n.2. The *McKinney* Court more recently observed that this Court has "carefully avoided any suggestion" in its line of cases based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that it was "impermissible for judges to exercise discretion-taking into consideration various factors relating both to offense and offender- in imposing a judgment within the range prescribed by statute." *McKinney*, 140 S. Ct. at 707.

This Court has repeatedly observed that it is aggravators that are elements of the greater offense of capital murder. *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (stating that because aggravating factors" operate as the functional equivalent of an element of a greater offense" of capital murder, "the Sixth Amendment requires that they be found by a jury"); *Sattazahn v. Pennsylvania*, 537 U.S. 101, 111 (2003) (plurality opinion) (explaining, that "for purposes of the Sixth Amendment's jury-trial

guarantee, the underlying offense of murder is a distinct, lesser included offense of 'murder plus one or more aggravating circumstances" which "increases the maximum permissible sentence to death" and therefore, a jury, and not a judge, must find the existence of any aggravating circumstances beyond a reasonable doubt); *McKinney*, 140 S. Ct. at 705 (stating that under "this Court's precedents, a defendant convicted of murder is eligible for a death sentence if at least one aggravating circumstance is found," citing numerous cases). So, because it is the aggravator that increases the penalty to death, it is only aggravating factors that must be found at the beyond a reasonable doubt standard under this Court's due process jurisprudence. Only one fact increases a sentence to a death sentence in Florida and that fact, under the text of Florida's death penalty statute and the Florida Supreme Court's controlling precedent of *State v. Poole*, is the finding of one aggravating factor. § 921.141(2)(b)(2), Fla. Stat. (2021). It is that fact, and that fact alone, that the jury must find at the beyond a reasonable doubt standard of proof.

Moreover, the petition does not acknowledge or distinguish *Carr* or *McKinney*. Again, petitions for writ of certiorari that do not account for this Court's recent decisions in an area do not warrant this Court's serious consideration.

There is no conflict with this Court's Sixth Amendment or due process jurisprudence and the Florida Supreme Court's decision in this case. Therefore, there is no basis for granting certiorari review of this issue.

III. Whether Florida's capital sentencing complies with this court's narrow holding in *Atkins v. Virginia*, 536 U.S. 304 (2002), exempting intellectually disabled defendants from the death penalty.

Petitioner Wells is under the false belief that this Court's holding in *Atkins*[7] should extend to defendants that suffer from serious mental illness and cites *Roper v. Simmons*, 543 U.S. 551 (2005) in support of his position. However, the Court in *Roper* was concerned about the age of the defendant at the time of the capital offense and held that execution of individuals who were under 18 years of age at time of their capital crimes was prohibited by the Eighth and Fourteenth Amendments. Petitioner cites no opinion of this Court that establishes *Atkins* extends to defendants with mental illness, and this Court should decline to consider this issue.

The Florida Supreme Court Decision

The Florida Supreme Court ruled that Wells' argument that *Atkins* should be extended to categorically bar the imposition of the death sentence on those who suffer mental illness lacked merit. *Wells*, 364 So. 3d at 1016. The Florida Supreme Court noted that it has consistently refused to extend *Atkins* as do numerous other state and federal courts alike. *See Lawrence v. State*, 969 So. 2d 294, 300 n.9 (Fla. 2007); *Schoenwetter v. State*, 46 So. 3d 535, 562-63 (Fla. 2010); *Muhammad v. State*, 132 So. 3d 176, 207 (Fla. 2013); *Dillbeck v. State*, No. SC23-190, 357 So. 3d 94, 100–01 (Fla. Feb. 16, 2023) (citing *Gordon v. State*, 350 So. 3d 25, 37 (Fla. 2022)). *See Lewis v. State*, 279 Ga. 756, 620 S.E.2d 778, 786 (2005); *State v. Dunlap*, 155 Idaho 345, 313

[7] *Atkins v. Virginia*, 536 U.S. 304 (2002).

P.3d 1, 36 (2013); *Matheney v. State*, 833 N.E.2d 454, 458 (Ind. 2005); *State v. Kleypas*, 305 Kan. 224, 382 P.3d 373, 447-48 (2016); *Dunlap v. Commw.*, 435 S.W.3d 537, 616 (2013); *State v. Mammone*, 139 Ohio St.3d 467, 13 N.E.3d 1051, 1089-90 (2014); *Mays v. State*, 318 S.W.3d 368, 379 (Tex. Crim. App. 2010); *Mays v. Stephens*, 757 F.3d 211, 219 (5th Cir. 2014); *Franklin v. Bradshaw*, 695 F.3d 439, 455 (6th Cir. 2012); *Carroll v. Sec'y, DOC*, 574 F.3d 1354, 1370 (11th Cir. 2009); *United States v. Akbar*, 74 M.J. 364, 406 (C.A.A.F. 2015). *Wells*, 364 So. 3d at 1016.

No Conflict with this Court's Jurisprudence

The Court in *Atkins* provided two reasons why its death penalty jurisprudence is consistent with the legislative consensus that the intellectually disabled should be categorically excluded from execution. The first reason was whether retribution and deterrence apply to the intellectually disabled. (citing *Gregg,* 428 U.S. at 183) (joint opinion of Stewart, Powell, and STEVENS, JJ.), and identifying "retribution and deterrence of capital crimes by prospective offenders" as the social purposes served by the death penalty.)" *Atkins*, 536 U.S. at 318–19 (2002).

The Court determined with respect to retribution, the severity of the appropriate punishment necessarily depends on the culpability of the offender. *Id.* at 319. And in terms of deterrence, the interest is in "preventing capital crimes by prospective offenders — "it seems likely that 'capital punishment can serve as a deterrent only when murder is the result of premeditation and deliberation,'" (citing *Enmund,* 458 U.S., at 799) *Id.* The second reason the *Atkins* Court gave was the reduced capacity of the intellectually disabled as justification for a categorical rule

making such offenders ineligible for the death penalty. *Id.* at 320. The Court went on to stress that exempting the intellectually disabled from execution will not lessen the deterrent effect of the death penalty with respect to offenders who are not intellectually disabled. "Such individuals are unprotected by the exemption and will continue to face the threat of execution. *Id.*

The *Atkins* Court did not extend its holding to defendants who suffer serious mental illnesses. In *Indiana v. Edwards*, although the defendant was not intellectually disabled, "the Court held that United States Constitution permits states to insist upon representation by counsel for those who are competent enough to stand trial but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Indiana v. Edwards*, 554 U.S. 164 (2008). The Court was clear that mental illness does not exempt someone from responsibility of their crimes.

The Court in *Hall v. Florida*, held only that "Florida's rule, as interpreted by that State's Supreme Court, foreclosing further exploration of a capital defendant's intellectual disability if his IQ score was more than 70, created unacceptable risk that persons with intellectual disability would be executed, in violation of Eighth Amendment." *Hall v. Florida*, 572 U.S. 701 (2014).

This Court in *Hurst v. Florida*, held that "Florida's capital sentencing scheme, under which an advisory jury makes a recommendation to a judge, and the judge makes the critical findings needed for imposition of a death sentence, violates the Sixth Amendment right to jury trial." *Hurst v. Florida*, 577 U.S. 92 (2016).

In *Moore v. Texas*, the Court clarified its categorical ban on the death penalty for the intellectually disabled, holding that states cannot disregard current medical diagnostic criteria and that reliance on outdated *Briseno*[8] factors created an unacceptable risk that the intellectually disabled would be executed in violation of the Eighth Amendment. *Moore v. Texas*, 581 U.S. 1 (2017).

Although the Petitioner believes this Court's Eighth Amendment jurisprudence extends to defendants suffering serious mental illness, it does not. There is no conflict with this Court's Sixth or Eighth Amendment jurisprudence and the Florida Supreme Court's decision in this case. Therefore, review of this issue should be denied.

Defendants Eligible for the Death Penalty in Florida

The protections granted by this Court in *Atkins*, and further clarified in *Hall, Hurst*, and *Moore* are consistent with the Florida Supreme Court's decision in this case. The first limiting criteria to be eligible for the death penalty in Florida is committing a capital felony. Florida's capital sentencing statute § 921.141 requires that once a defendant of a capital felony has been convicted or adjudicated guilty, a separate proceeding on the issue of the penalty will be conducted by the trial judge in front of the trial jury. *If the defendant has not waived his or her right to a sentencing proceeding by a jury*, evidence will be presented regarding aggravating factors and mitigating circumstances. After hearing all the evidence, the jury shall determine if the state has proven, beyond a reasonable doubt, the existence of at least one

[8] *Ex parte Briseno*, 135 S.W.3d 1 (Tex. Crim. App. 2004).

aggravating factor and identify each aggravating factor found to exist. The jury must be unanimous that an aggravating factor exists. Then, and only then, is the defendant eligible for the death penalty.

However, Petitioner in this case pled guilty, waived his right to a penalty phase jury trial and the presentation of mitigation. This Court in *Atkins* defined the limiting instructions for a categorical bar to the death penalty, and Petitioner does not fit into that category. The petition raises issues that are not outcome determinative and involve no conflict. Accordingly, this Court should deny the petition.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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