No. _____

IN THE

Supreme Court of the United States

HECTOR SANCHEZ-TORRES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE

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CAPITAL CASE

QUESTIONS PRESENTED

1. In a case in which the victim died from a single gunshot wound and the factfinder did not find that the death-sentenced codefendant fired the fatal shot, does it violate the Eighth Amendment or the Equal Protection Clause of the Fourteenth Amendment to sentence the nineteen-year-old codefendant to death when his similarly culpable seventeen-year-old codefendant may serve as little as fifteen years in prison?

2. Does a state appellate court's death penalty review violate the Eighth Amendment when the appellate court determines that the impact of mitigation evidence—which could be presented at a new trial showing that the death-sentenced codefendant was not the shooter—is inconsequential solely because he was sentenced to death on the basis of two aggravating circumstances that were "independent" of which codefendant shot the victim?

PARTIES TO THE PROCEEDINGS

Petitioner Hector Sanchez-Torres, a death-sentenced Florida prisoner, was the appellant in the Florida Supreme Court.

Respondent, the State of Florida, was the appellee in the Florida Supreme Court.

RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Trial:
Circuit Court of Clay County, Florida
State of Florida v. Hector Sanchez-Torres, Case No. 10-2009-CF-671-AXXX-MA
Judgment Entered: September 1, 2011

Direct Appeal:
Florida Supreme Court (No. SC11-1760)
Hector Sanchez-Torres v. State, 130 So. 3d 661 (Fla. 2013)
Judgment Entered: July 3, 2013 (affirming conviction and sentence)
Rehearing Denied: October 3, 2013

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 13-7735)
Hector Sanchez-Torres v. Florida, 571 U.S. 1210 (2014)
Judgment Entered: February 24, 2014

Initial Postconviction Proceedings:
Circuit Court of Clay County, Florida
Sanchez-Torres v. State, Case No. 10-2009-CF-671-AXXX-MA
Judgment Entered: January 22, 2019 (denying motion for postconviction relief and motion to withdraw the guilty plea and penalty-phase jury waiver)

Florida Supreme Court (Nos. SC19-211; SC19-836)
Sanchez-Torres v. State, 322 So. 3d 15 (Fla. 2020)
Judgment Entered: March 12, 2020 (affirming denial of postconviction relief and denying petition for habeas corpus)
Rehearing of Appeal Denied: May 13, 2021
Rehearing of State Habeas Denied: August 5, 2021

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 21-6563)
Sanchez-Torres v. Florida, 142 S. Ct. 1145 (2022)
Judgment Entered: February 22, 2022

Federal Habeas Proceedings:
District Court for the Northern District of Florida
Sanchez-Torres v. Jones, Case No. 3:17-cv-939-MMH-PDB
Petition filed

First Successive Postconviction Proceedings:
Circuit Court of Clay County, Florida
Sanchez-Torres v. State, Case No. 10-2009-CF-671-AXXX-MA
Judgment Entered: January 12, 2022 (denying motion for postconviction relief)

Florida Supreme Court (No. SC22-322)
Sanchez-Torres v. State, 365 So. 3d 1134 (Fla. 2023)
Judgment Entered: March 16, 2023
Rehearing Denied: June 20, 2023

Second Successive Postconviction Proceedings:
Circuit Court of Clay County, Florida
Sanchez-Torres v. State, Case No. 10-2009-CF-671-AXXX-MA
Proceedings ongoing

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DECISION BELOW

The Florida Supreme Court's decision is reported at 365 So. 3d 1134 (Fla. 2023), is also available at 2023 WL 2534193, and is attached as Appendix A ("App. A"). Petitioner's motion for rehearing was denied on June 20, 2023, and is attached to this petition as Appendix B ("App. B").

JURISDICTION

The Florida Supreme Court entered an opinion denying relief on March 16, 2023, App. A, and denied rehearing on June 20, 2023, App. B. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

I. Introduction

Hector Sanchez-Torres has been condemned to die for a shot he never fired. In contrast, his codefendant—who is equally or more culpable than Mr. Sanchez-Torres and previously confessed to being the sole triggerman—is sentenced to a term of years and could be released from prison as soon as March 2024.

At the time Mr. Sanchez-Torres was sentenced in 2011, both he and his codefendant, Markeil Thomas, received the maximum sentence available to them under the law. Mr. Sanchez-Torres, who at the time of the crime was 19 years of age and suffering from numerous impairments including cognitive underdevelopment, received a death sentence. Thomas, a scant year and eight months younger, received a sentence of life in prison without the possibility of parole. No determination was made regarding the identity of the shooter.[1] In 2018, however, Thomas was

[1] The jury verdict in Thomas' case, which was referenced and considered during Thomas' resentencing proceedings, found that the State did not prove beyond a reasonable doubt that Thomas possessed or discharged a firearm during the offense. (PCR-2 464-65). This, however, is simply a finding that the State did not meet its heavy burden of proof regarding Thomas' conduct. It is not a finding that Thomas was not **in fact** the shooter, or that Mr. Sanchez-Torres was. *See United States v. Watts*, 519 U.S. 148 (1997); *Harris v. State*, 959 So. 2d 794, 799 (Fla. 2d DCA 2007) (Canady, J., dissenting) (noting that "a jury's acquittal is not a rejection of facts; it is merely an acknowledgement that the government failed to prove an essential element of the offense beyond a reasonable doubt") (internal quotations omitted). Neither codefendant was found to be the shooter at either trial or direct appeal. Notably, even though the same judge presided over Thomas' trial as Mr. Sanchez-Torres' penalty phase and sentencing, and although Mr. Sanchez-Torres' penalty phase occurred after Thomas' trial had concluded, *the trial court still explicitly declined to find that Mr. Sanchez-Torres was the shooter*. (5 R 886).

resentenced to a maximum term of 40 years in prison, with a potential release date early next year. In other words, Thomas now may serve as little as 15 years in prison.

Additionally, Thomas' resentencing brought to light new information that implicates Thomas as the sole shooter and inherently more culpable actor in the murder for which Mr. Sanchez-Torres has been condemned. Thomas' newly-discovered heightened culpability relative to Mr. Sanchez-Torres, coupled with Thomas' drastic reduction in sentence, has rendered Mr. Sanchez-Torres' death sentence unconstitutionally disproportionate.

Without this Court's intervention, Mr. Sanchez-Torres will be slated to die while his equally or more culpable codefendant could be walking free in his early 30s. This is the epitome of disparate treatment, arbitrary sentencing, and necessitates certiorari review to uphold this Court's longstanding Eighth and Fourteenth Amendment principles.

II. Procedural Background

A. Mr. Sanchez-Torres' Prior Litigation History

On March 30, 2009, 19-year-old Hector Sanchez-Torres was indicted in Clay County, Florida, for the first-degree murder and armed robbery of Erick Colon. Colon had been shot once. Markeil Thomas, who was 17 years old at the time of the crime, was also charged. On what would later be challenged as ineffective advice by his attorney, Mr. Sanchez-Torres pleaded guilty to both counts on April 29, 2011. (7 R

39).[2] After waiving a penalty phase jury,[3] he was sentenced to death by Judge Skinner ("the trial court") on September 1, 2011. (9 R 490).

In its sentencing order, the trial court relied on a finding of two aggravators to impose a death sentence: 1) that the murder occurred during the course of a robbery; and 2) that Mr. Sanchez-Torres had previously confessed to and been convicted of murder.[4]

The State affirmatively argued at Mr. Sanchez-Torres' trial that the evidence could support a finding that either codefendant was the shooter. In other words, the trial court had discretion to find that Mr. Sanchez-Torres was the shooter. However,

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[2] References to the Record on Appeal for the direct appeal in this case are designated "[volume] R [page]." References to the Supplemental Record on Appeal are designated "[volume] R Supp. [page]." References to the Record on Appeal for the initial postconviction proceeding are designated "PCR [page]." References to the Record on Appeal generated for the appeal of Markeil Thomas, Mr. Sanchez-Torres' codefendant, are designated "[volume] MT-R [page]." References to the Record on Appeal generated in *Sanchez-Torres v. Justice Administration Commission*, 2021 WL 72196 (Fla. Jan. 8, 2021) are designated "FS-R [page]." References to the Record on Appeal of the successive postconviction proceeding below are designated "PCR-2 [page]."

[3] As with Mr. Sanchez-Torres' plea, the penalty phase jury waiver was entered on the advice of his attorneys, which would later be challenged as ineffective. Mr. Sanchez-Torres also raised his attorneys' ineffectiveness in failing to file a motion to suppress his coerced confession. *Sanchez-Torres v. State*, 322 So. 3d 15 (Fla. 2020).

[4] The facts underlying that conviction involve Mr. Sanchez-Torres' shooting of an adult male, Levi Rollins, who sexually assaulted and exploited Mr. Sanchez-Torres as a juvenile, became increasingly possessive of and intimidating toward Mr. Sanchez-Torres over a course of years, and whose aggression later rapidly escalated to the point of threats to the life of Mr. Sanchez-Torres' girlfriend and unborn child. In that case, the expert who evaluated Mr. Sanchez-Torres, Dr. Harry Krop, found that he was under the influence of extreme mental or emotional distress at the time of the shooting. (PCR 301).

the trial court explicitly declined to make a finding that Mr. Sanchez-Torres was the triggerman. (5 R 886).

On direct appeal, the Florida Supreme Court declined to analyze the relative culpability of Thomas and Mr. Sanchez-Torres. *Sanchez-Torres v. State*, 130 So. 3d 661, 675 (Fla. 2013). Under state court precedent, relative culpability proportionality analysis is only conducted when there is a disparity of sentences. At the time of Mr. Sanchez-Torres' direct appeal, Thomas was serving life without the possibility of parole. Because Mr. Thomas had been under 18 years of age at the time of the crime, he was categorically ineligible for the death penalty. Therefore, like Mr. Sanchez-Torres, Thomas was then serving the maximum sentence for which he was eligible under law, which meant there was no sentencing disparity and accordingly no relative culpability analysis to be performed. The Florida Supreme Court affirmed Mr. Sanchez-Torres' conviction and sentence. *Id.*

On February 13, 2015, Mr. Sanchez-Torres moved for postconviction relief under Fla. R. Crim. P. 3.851. He supplemented his postconviction motion in light of the newly decided *Hurst v. Florida*, 577 U.S. 92 (2016), and moved to withdraw his guilty plea and penalty phase jury waiver. At the time his initial 3.851 motion was filed, Mr. Sanchez-Torres was represented by Gonzalo Andux. The trial court held a two-day evidentiary hearing, (PCR 803), prior to which Andux was replaced by attorney Francis Jerome Shea.

At the evidentiary hearing, Mr. Sanchez-Torres presented evidence that his trial attorneys were ineffective in various ways, including their actions related to his

confession, which Mr. Sanchez-Torres argued was the product of coercion by law enforcement. Dr. Stephen Bloomfield and Dr. Julie Kessel evaluated Mr. Sanchez-Torres in conjunction with his postconviction proceedings. They found that he had a submissive, dependent personality type. (PCR 2555, 2610-11). His cognitive function was impaired by "a number of cognitive problems," (PCR 2549, 2610), an immature and underdeveloped brain, (PCR 2551-53, 2603-04), major depressive disorder, (PCR 2561), and "incredibly intense substance abuse[.]" (PCR 2606). The experts also concluded that "the capital felony was committed while [Mr. Sanchez-Torres] was under the influence of extreme mental or emotional distress[.]" (PCR 470, 2610).

On January 22, 2019, the trial court denied all relief. On appeal of that denial, Shea withdrew as counsel amidst significant controversy over his qualification to handle Mr. Sanchez-Torres' litigation and was replaced by The Office of the Capital Collateral Regional Counsel-North (CCRC-N). The Florida Supreme Court affirmed the denial of 3.851 relief and denied state habeas corpus relief on March 12, 2020. *Sanchez-Torres v. State*, 322 So. 3d 15 (Fla. 2020).

Throughout all of Mr. Sanchez-Torres' prior proceedings, no factfinder has found him to be the shooter or more culpable than Thomas.

B. Other Relevant Facts

Prior to Mr. Sanchez-Torres' coerced confession, the only evidence connecting Thomas and Mr. Sanchez-Torres to this crime was their prior possession of the victim's cell phone, which was destroyed by the boyfriend of Mr. Sanchez-Torres' mother soon after the crime and approximately five months before the codefendants

were arrested. (8 R 288). With no other leads, Clay County detectives created arrest warrants for Mr. Sanchez-Torres' mother, sister, and uncle for tampering with evidence, and stated that either they would all be arrested, or Mr. Sanchez-Torres would. (1 R Supp. 190).[5] Mr. Sanchez-Torres' sister was interrogated at her school. (2 R Supp. 204-08). She and Mr. Sanchez-Torres' mother were so distressed by law enforcement's threats that they were reduced to tears. (8 R 288; 2 R Supp. 209). In response to these threats, Mr. Sanchez-Torres' mother called him, and he instructed her to tell the detectives he wanted to speak with them. (1 R Supp. 192). Making clear to the detectives that he felt the need to protect his family, Mr. Sanchez-Torres confessed the next day. (8 R 269, 291).

When Mr. Sanchez-Torres confessed, he implicated Markeil Thomas, who would become his codefendant, as the individual who shot Colon. Days later, detectives interviewed Thomas. After showing him a video of Mr. Sanchez-Torres stating that Thomas was the shooter, detectives told Thomas they knew Mr. Sanchez-Torres to be the shooter and just wanted Thomas to tell them what he witnessed. Thomas denied being the shooter but confirmed he was present at the scene. At the conclusion of that interview, Thomas was arrested for the murder of Colon.

Mr. Sanchez-Torres eventually gave a statement that was in conflict with his initial assertion that Thomas was the shooter. Having recently given a confession to the shooting death of Levi Rollins, a man who had been actively threatening the life

[5] Importantly, although Thomas and the boyfriend of Mr. Sanchez-Torres' mother were involved in destroying the cell phone, they were not named in the arrest warrants.

of Sanchez-Torres' girlfriend and unborn child, Mr. Sanchez-Torres was already facing life in prison without the possibility of parole and felt he had nothing to lose. Once again seeking to protect those close to him, he made the inconsistent statement regarding the triggerman in Colon's death. (5 R 885-86).

During the penalty phase of his trial, Mr. Sanchez-Torres argued that his statements to law enforcement—including his vacillation between initially naming Thomas as the shooter, then later accepting blame himself—were the result of coercion. Mr. Sanchez-Torres sought to introduce evidence that he had passed a polygraph examination showing that he did not shoot Colon, but that evidence was excluded as inadmissible. (5 R 886, 9 R 404). Mr. Thomas refused to take a polygraph test. (PCR 2729-30).

Thomas was charged in a separate indictment for Colon's murder and the State did not move to join his trial with that of Mr. Sanchez-Torres. *See State v. Thomas*, 2009-CF-604 (Clay Cty. Cir. Ct.). As in Mr. Sanchez-Torres' case, Thomas was tried before Judge Skinner and the State pursued alternate theories of premeditated murder and felony-murder. The entirety of Thomas' trial occurred over three days in June of 2011, during a recess of Mr. Sanchez-Torres' penalty phase. Mr. Sanchez-Torres was forced to testify via subpoena.

On August 9, 2011, Thomas was concurrently sentenced to life in prison without the possibility of parole for first-degree murder, and to 30 years for armed robbery. Thus, at the time of Mr. Sanchez-Torres' sentencing, Thomas had already been convicted and sentenced to life without the possibility of parole—then the

maximum possible sentence for one under 18 at the time of the crime. The State entered certified copies of the verdict form from Thomas' trial, presumably for purposes of evaluating relative culpability of the two codefendants. (9 R 416). The trial court orally explained that he would consider evidence from Thomas' trial in sentencing Mr. Sanchez-Torres, particularly regarding who was the shooter. (7 R 46-48). Mr. Sanchez-Torres was not allowed to introduce evidence to contextualize his compelled testimony in Thomas' case.

In reaching a sentencing decision for Mr. Sanchez-Torres, the trial court found that Mr. Sanchez-Torres was instrumental in planning and robbing the victim but expressly declined to find he was the shooter. (5 R 886). However, the court noted evidence that supported an inference that Mr. Sanchez-Torres was the shooter, and thus the more culpable codefendant. In doing so, the court explicitly considered evidence from Thomas' trial. (5 R 875-76; 884-86). Specifically, the court referenced Mr. Sanchez-Torres' inconsistent statements to law enforcement over the course of an interrogation, where Mr. Sanchez-Torres stated at the outset that he was not the shooter, then vacillated. (5 R 885-86). The court contrasted these statements with what, at the time, it perceived to be consistent statements from Thomas. (5 R 885-86).[6]

[6] This was a mistake, even at the time of trial. The interview of Thomas was taped and played at Thomas' trial, although it was not evidence in Mr. Sanchez-Torres' case. During his taped interview with law enforcement, Thomas provided detectives with several inconsistent and implausible accounts of the crime. (5 MT-R 864, 929, 954). For instance, contrary to Judge Skinner's finding that Mr. Sanchez-Torres was the only one to accurately describe that the victim was shot below the left eye, Thomas did the same. In fact, the State even argued during closing arguments at Thomas'

The First District Court of Appeal affirmed Thomas' convictions but ordered resentencing under *Miller v. Alabama*, 567 U.S. 460 (2012), due to Thomas being 17 years old at the time of the crime. *Thomas v. State*, 110 So. 3d 541 (Fla. 1st DCA 2013). On May 30, 2013, Judge Skinner resentenced Thomas to concurrent sentences of 40 years without parole for first-degree murder and 30 years for armed robbery. *Thomas v. State*, 135 So. 3d 590, 590 (Fla. 1st DCA 2014). The First DCA affirmed, but the Florida Supreme Court reversed and remanded for a resentencing that conformed to Florida's newly established framework for juvenile sentencing post-*Miller*. *Thomas v. State*, 177 So. 3d 1275 (Fla. 2015).

In the meantime, on March 26, 2015, Thomas gave a sworn statement in which he confessed to being the sole shooter of Colon. (PCR 473-83) (attached as App. C). In this statement, made to Mr. Sanchez-Torres' then-postconviction counsel, Gonzalo Andux, Thomas made clear that he was not offered or promised anything in exchange for his confession. *Id*. He confessed that he, and not Mr. Sanchez-Torres, possessed the gun on the night of the crime. Thomas stated that he noticed Colon walking, and "got out of the car and met the victim." (PCR 479). This decision was "off impulse" rather than "really…having a reason." *Id*. Thomas shot Colon after taking his phone, money, and marijuana. This account was consistent with Mr. Sanchez-Torres' statement to law enforcement that he had been walking towards Colon at the time

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trial that his knowledge of that detail supported a finding that he was the shooter. (6 MT-R 1105) ("The way [Thomas] has them angled Erick Colon's back is to him if he's never out of the car. His back's to him. Yet he describes for law enforcement exactly how close he remembers that gun being to his left eye, something that's taking place on the other side of him . . .").

Thomas shot him. Thomas swore that Mr. Sanchez-Torres had nothing to do with the robbery and that the gun belonged to Thomas. (PCR 477-81).

Over a year later, in September 2016, Thomas proceeded to a second resentencing. (PCR-2 61). Two weeks before this resentencing—at which Thomas sought a lesser sentence by arguing that he was not the shooter and thus the less culpable codefendant, Thomas recanted his confession. (PCR-2 57-59). In a new statement, Thomas claimed that prior to giving his 2015 sworn statement, Andux pulled him into a private office within the prison and promised that Mr. Sanchez-Torres would confess to perjury during Thomas' trial in exchange for a statement that Thomas was the triggerman. (PCR-2 58-59). Thomas claimed he made the first confession because he believed it could not harm his own case. *Id*. Thomas filed a bar complaint against Andux, which was dismissed.

During the two days of Thomas' second resentencing, information about his mental and behavioral history was made public for the first time. Thomas admitted on the stand that he had received multiple disciplinary reports in prison for lying to prison staff. Dr. William Meadows, a mental health expert originally hired by Thomas' trial counsel, generated a new forensic report for his 2016 resentencing. (PCR-2 146-54). Dr. Meadows noted that, in his original report at the time of trial, he diagnosed Thomas with antisocial personality disorder. (PCR-2 148). His psychosocial history and test profile were "indicative of an individual with recurrent problems with anger management and explosiveness." *Id*. Additionally, Dr. Meadows noted—and Thomas confirmed during his testimony—that as a juvenile, Thomas bludgeoned a

fellow classmate in the back of the head with brass knuckles on a dare. (PCR-2, 65-66, 121-22).

After Thomas' two-day resentencing hearing, Judge Skinner again sentenced him to concurrent sentences of 40 and 30 years, but now with a statutorily mandated juvenile offender review of each sentence after 15 and 20 years, respectively. The First DCA affirmed and Thomas' sentence became final on February 26, 2018. *Thomas v. State*, 239 So. 3d 1193 (Fla. 1st DCA 2018).

During the time period in which the new information was emerging regarding Thomas, Mr. Sanchez-Torres was undergoing instability in his postconviction representation. Andux withdrew as Mr. Sanchez-Torres' attorney due to the conflict of interest posed by Thomas' bar complaint. (PCR 484). After this, Judge Skinner appointed W. Charles Fletcher as counsel, (PCR 676-77, 680), but Fletcher was replaced after the State indicated that the appointment order contained no assurance that he was death-qualified (PCR 681, 684, 687). Francis Shea was appointed as Fletcher's replacement on February 28, 2017. (PCR 687). However, after a protracted battle regarding Shea's lack of qualifications to represent Mr. Sanchez-Torres, he eventually left the case several years later. (PCR 2524-27, 4079-82; FS-R 41-48; PCR-2 316-17). *See also State v. Sanchez-Torres*, 2009-CF-671-AMX, Doc. 526 (Clay Cty. Cir. Ct. filed February 4, 2019); *Sanchez-Torres v. JAC*, 2021 WL 72196 (Fla. January 8, 2021). Thus, for several years, Mr. Sanchez-Torres languished without the benefit of qualified, conflict-free postconviction counsel.

C. Mr. Sanchez-Torres' Underlying Eighth and Fourteenth Amendment Claims

In the successive postconviction motion underlying this petition, Mr. Sanchez-Torres presented Eighth and Fourteenth Amendment claims based on the newly discovered evidence of Thomas' vastly reduced sentence and potential for early release. After being sentenced to life in prison without the possibility of parole at the time of his (and Sanchez-Torres') trial, Thomas has now been resentenced to concurrent maximum sentences of 40 and 30 years with a statutorily mandated review of each sentence after 15 and 20 years, respectively. Thus, Thomas may be released from prison as early as 2024, at the age of 33, for the same crime for which Mr. Sanchez-Torres faces execution.

Mr. Sanchez-Torres explained that the constitutional violation is heightened by additional new evidence of Thomas' greater culpability, which came to light during his latest resentencing. This included (1) Thomas' dubious recantation of his sworn confession to being the sole shooter of Colon, which demonstrates Thomas' inconsistency and undercuts the trial court's prior comparison of Thomas' perceived consistency with "inconsistencies" in Mr. Sanchez-Torres' coerced statements to law enforcement; (2) a forensic psychological report diagnosing Thomas with Antisocial Personality Disorder and as an individual "with recurrent problems with anger management and explosiveness" which contrasts with the clear findings that Mr. Sanchez-Torres is not antisocial; and (3) Thomas' prior conviction for bludgeoning a schoolmate in the back of the head using brass knuckles, simply on a dare.

D. The Florida Supreme Court's Decision Below

In rejecting Mr. Sanchez-Torres' claim below, the Florida Supreme Court's denial of relief rested solely on the merits. Specifically, the Florida Supreme Court declined to conduct a relative culpability analysis, based on its determination that such analysis was inapplicable to the claim of disproportionate sentencing because Thomas was categorically ineligible for the death penalty by virtue of his age. *Sanchez-Torres v. State*, 365 So. 3d 1134, 1136 (Fla. 2023). Additionally, because the trial court relied on two aggravators rather than a triggerman finding to sentence Mr. Sanchez-Torres to death, the Florida Supreme Court determined that new information regarding Thomas' disproportionate sentence and triggerman status did not mitigate Mr. Sanchez-Torres' death sentence. *Id*.

REASONS FOR GRANTING THE WRIT

I. A State Court's Failure to Consider the Disproportionate Sentence of an Equally or More Culpable Codefendant in a Capital Case Contravenes the Eighth and Fourteenth Amendments

The Eighth Amendment is built on the principle that punishment should be directly related to the personal culpability of the criminal defendant. *See Penry v. Lynaugh*, 492 U.S. 302, 319 (1989), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002); *Eddings v. Oklahoma*, 455 U.S. 104, 114-15 (1982); *Gregg v. Georgia*, 428 U.S. 153, 197-98 (1976). "It is a precept of justice that punishment for crime should be graduated and proportioned to the offense." *Atkins*, 536 U.S. at 311 (quoting *Weems v. United States*, 217 U.S. 349 (1910)). This applies with special force in capital cases. *See Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J.,

concurring in judgment). "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008). Thus, states must administer the death penalty "in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." *Spaziano v. Florida*, 468 U.S. 447, 460 (1984), *overruled on other grounds by Hurst v. Florida*, 577 U.S. 92, 101 (2016). "Capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (quoting *Atkins*, 536 U.S. at 319); *see also Godfrey v. Georgia*, 446 U.S. 420, 428, 433 (1980) (setting death sentence aside in order to avoid "arbitrary and capricious infliction of the death penalty" because the petitioner's crimes did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder.").

Here, evidence that has emerged since Mr. Sanchez-Torres' trial makes clear that he is not in this category of most culpable individuals. There has never been a finding in his case that he is more culpable than Thomas, who will be eligible for release from prison as early as March 2024. Indeed, the evidence that has emerged since trial indicates the opposite—that Thomas himself was the triggerman, and inherently more culpable than Mr. Sanchez-Torres. Yet, the same factfinder who sentenced Mr. Sanchez-Torres to death sentenced Thomas to a term of years well below the legal maximum and provided an opportunity for release as early as next

year. This disparity conflicts with this Court's longstanding caselaw, renders Mr. Sanchez-Torres' death sentence unconstitutionally disproportionate, and necessitates this Court's intervention.

A. This case presents an important issue worthy of this Court's review

This Court has made clear that a review of the relative culpability of codefendants is constitutionally required in capital cases. *See, e.g.*, *Lockett v. Ohio*, 438 U.S. 586, 612 (1978) (plurality) (ruling it violates the Eighth Amendment to preclude a jury from considering a "defendant's comparatively minor role in the offense"); *id*. at 613 (Blackmun, J., concurring) (joining the judgment on the ground that it is impermissible to prohibit a sentencer from considering the defendant's role in the crime relative to other codefendants); *Enmund v. Florida*, 458 U.S. 782, 798 (1982) (finding it impermissible under the Eighth Amendment to treat codefendants alike when their relative culpability was "plainly different"); *Tison v. Arizona*, 481 U.S. 137 (1987) (citing *Enmund*). Further, equal protection is violated "[w]hen the law lays an unequal hand on those who have committed intrinsically the same quality of offense and . . . [subjects] one and not the other" to a harsh form of punishment. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

Relative culpability analysis is particularly important as it relates to who actually killed the victim. The sentencer in a capital proceeding must be allowed to meaningfully consider and give effect to *any* circumstance of a defendant's character or background, or any circumstance of the crime, that may justify a sentence less than death. *See Abdul-Kabir v. Quarterman*, 550 U.S. 233, 246-56 (2007); *Lockett v. Ohio*,

438 U.S. 586, 604-05 (1978). This necessarily includes relative culpability of a codefendant. Under the Eighth Amendment, punishment should be directly related to the personal culpability of the defendant. Indeed, whether or not a codefendant was the actual triggerman is a "critical issue" in the penalty phase of a capital trial when the relative culpability of the defendant is at issue. *See Green v. Georgia*, 442 U.S. 95, 97 (1979).

Therefore, under this Court's longstanding precedent, it is unconstitutionally arbitrary and irrational to maintain an individual's death sentence when his equally or more culpable (triggerman) codefendant faces a lesser sentence. Here, because Mr. Sanchez-Torres is no more culpable than Thomas, who has been resentenced to a maximum term of 40 years, with early release possible as early as March 2024, Mr. Sanchez-Torres' death sentence is the epitome of an arbitrary and irrational sentence prohibited by the constitution. *See Parker v. Dugger*, 498 U.S. 308, 321 (1991).

Yet, the Florida Supreme Court has refused to apply this Court's disproportionality jurisprudence in Mr. Sanchez-Torres' case. In rejecting Mr. Sanchez-Torres' claim solely on the merits, the Florida Supreme Court found that relative culpability analysis was inapplicable because Thomas was legally ineligible for the death penalty by virtue of his age. *Sanchez-Torres v. State*, 365 So. 3d at 1136. But this determination ignores and cannot be reconciled with the scenario created by the trial court's resentencing of Thomas to a sentence far below the legal maximum.

At the time of Mr. Sanchez-Torres' sentencing, Thomas had been sentenced to the maximum sentence he could receive under law: life without the possibility of

parole. So, when Mr. Sanchez-Torres was sentenced, there was no sentencing disparity because both codefendants received the maximum sentence for which they were eligible under then-existing law. This has changed for Thomas. In his resentencing, under Florida's juvenile offender sentencing law, the trial court was required to make a holistic assessment of Thomas, which necessarily included relative culpability. And, in doing so, the trial court sentenced Thomas to a term of years with the possibility for release as early as 2024.

The disparity between the sentence received by Thomas and that received by Mr. Sanchez-Torres was not simply due to Thomas' legal ineligibility for a death sentence (such as when Thomas was sentenced to life in prison). It was due to a drastic and substantively considered reduction from the maximum sentence. The trial court had wide discretion at Thomas' resentencing and could have sentenced him to life imprisonment if it made the relevant findings. Thomas' new, drastically reduced sentence is thus different in both degree and kind than his original sentence, which was lesser than Mr. Sanchez-Torres' only because of Thomas' legal ineligibility for the death penalty. In other words, because Thomas could still legally have been sentenced to life in prison at the time of his resentencing, it was necessarily the trial court's consideration of Thomas' culpability that resulted in a sentence whereby Thomas is eligible for release on the murder conviction after a mere 15 years in prison. Because Mr. Sanchez-Torres' proceedings have never resulted in a finding that he is more culpable than Thomas, Thomas' new sentence is disparate in both theory and practice.

This Court's intervention is necessary to resolve the lower court's conflict with this Court's longstanding precedent regarding disproportionate death sentences. Indeed, this Court has not hesitated to strike down state court actions that fail to comply with this Court's "recogni[tion] time and again that the level of criminal responsibility of a person convicted of murder may vary according to the extent of that individual's participation in the crime[.]" *Sumner v. Shuman*, 483 U.S. 66, 79 (1987); In *Sumner*, this Court struck down a Nevada statute requiring automatic imposition of a death sentence for murders committed by prisoners serving sentences of life without parole, because such a statute prevented consideration of the level of a defendant's participation in the crime compared to his codefendants. *Id*. at 85. In intervening, this Court noted that to leave the statute in place would create an absurd result:

> Mandating that sentences imposed on inmates serving life terms be different from sentences imposed on other inmates *could produce the odd result of [an offense's] more culpable participants being accorded a less harsh sentence than the less culpable participant* simply because the less culpable one is serving a life sentence and the more culpable one is serving a sentence of years.

Id. at 79 n.8 (emphasis added). This result is materially indistinguishable from that in the instant case, where Mr. Sanchez-Torres faces execution while his equally or more culpable codefendant will be released after a term of years and as early as March 2024.

B. This case is a proper vehicle for consideration of the question presented

This case provides an excellent opportunity for this Court to determine the constitutional question presented, because this Court's jurisdiction to hear the case is not impeded by an independent or adequate state law ground. At the time of the Florida Supreme Court's ruling—which was exclusively based on the underlying merits—the Florida Supreme Court's own caselaw had long reaffirmed this Court's holdings that a less or equally culpable codefendant cannot be disproportionately sentenced to death when an equally or more culpable codefendant receives a lesser sentence. *See, e.g.*, *McCloud v. State*, 208 So. 3d 668, 688 (Fla. 2016) ("We have long recognized 'that the less culpable, non-triggerman defendant cannot receive a death sentence when the more culpable, triggerman defendant receives' a lesser sentence." (internal citations omitted)); *Blake v. State*, 972 So. 2d 839, 849-50 (Fla. 2007) (equally culpable co-defendants should be treated alike in capital sentencing); *Slater v. State*, 316 So. 2d 539 (Fla. 1975) (reducing defendant's death sentence because triggerman codefendant was sentenced to life via plea bargain).

Although the Florida Supreme Court has recently relied on an anomalous "conformity clause" in its state constitution to recede from its prior decisions endorsing relative culpability proportionality analysis, *see Cruz v. State*, 2023 WL 4359497 (Fla. July 6, 2023), this does not in any way impact the issues presented in this petition. First, the Florida Supreme Court did not recede from its prior caselaw until *after* its decision in this case. More importantly, in the underlying briefing in this case, the Florida Supreme Court was presented with the same argument that led

them to recede from relative culpability analysis in *Cruz*, but explicitly declined to engage with it. *Sanchez-Torres v. State*, 365 So. 3d at 1136. The constitutional claim presented here was denied solely on the Florida Supreme Court's determination that "relative culpability analysis does not apply when a coperpetrator is legally ineligible for the death penalty, including because of his age." *Id*.

C. Conclusion

The facts of this case make clear that Mr. Sanchez-Torres cannot be among those individuals "whose extreme culpability makes them 'the most deserving of execution,'" *Roper*, 543 U.S. at 568 (internal quotations omitted), because there is no rational distinction between his sentence and Thomas' new, extremely reduced, sentence. Sentencing one young codefendant to death while the other may be released from prison after as little as 15 years is the epitome of arbitrariness, irrationality, and disproportionality. Such a result violates the Eighth and Fourteenth Amendments and undermines Florida's imposition of the death penalty. This Court should grant certiorari review.

II. The Florida Supreme Court's Analysis Regarding Mr. Sanchez-Torres' Non-Triggerman Status is in Conflict with This Court's Eighth Amendment Jurisprudence

"It is beyond dispute that in a capital case the sentencer may not be precluded from considering, as a mitigating factor . . . any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Mills v. Maryland*, 486 U.S. 367, 374 (1988) (internal quotations omitted); *see also Tennard v. Dretke*, 542 U.S. 274, 275 (2004) (the Eighth Amendment requires a sentencer to

consider and give effect to mitigating evidence, and the threshold for relevance is low). "[V]irtually no limits" apply to this consideration. *Payne v. Tennessee*, 501 U.S. 808, 822 (1991).

In rejecting Mr. Sanchez-Torres' Eighth Amendment claim that the new evidence regarding Thomas' disproportionate sentence and triggerman status was relevant mitigation warranting a lesser sentence for Mr. Sanchez-Torres, the Florida Supreme Court found that because the trial court relied on two aggravators rather than a triggerman finding to sentence Mr. Sanchez-Torres to death, the new evidence did not mitigate Mr. Sanchez-Torres' death sentence. That determination conflicts with this Court's longstanding caselaw that a capital sentencer must consider the gamut of mitigating factors, including any and all evidence that bears on an individual's culpability. This includes evidence that a codefendant was the triggerman.

This Court has consistently reiterated that the Eighth Amendment significantly limits the circumstances under which a death sentence is appropriate, because to do so otherwise would risk "sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008). In *Atkins*, this Court wrote:

> With respect to retribution—the interest in seeing that the offender gets his "just deserts"—the severity of the appropriate punishment necessarily depends on the culpability of the offender….For example, in *Godfrey v. Georgia*, 446 U.S. 420, 100 S. Ct. 1759, 64 L.Ed.2d 398 (1980), we set aside a death sentence because the petitioner's crimes did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder." *Id*. at 433, 100 S. Ct. 1759. If the culpability of the average murderer is insufficient to justify the most extreme sanction

> available to the State, [a circumstance where an individual has inherently lessened culpability] surely does not merit that form of retribution.

536 U.S. at 319. And in *Parker v. Dugger*, 408 U.S. 308, 321 (1991), this Court stated:

> If a State has determined that death should be an available penalty for certain crimes, then it must administer that penalty in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not. . . .The Constitution prohibits the arbitrary or irrational imposition of the death penalty. *Id.* at 466-67. We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally.

Furthermore, in *Enmund v. Florida*, 458 U.S. 782 (1982), this Court established that the individualized sentencing that is required by the Eighth Amendment before the death penalty may be imposed must include a consideration of a particular defendant's culpability. This Court explained:

> The question before us is…the validity of capital punishment for Enmund's own conduct. The focus must be on his culpability, not on that of those who committed the robbery and shot the victims, for we insist on "individualized consideration as a constitutional requirement in imposing the death sentence, which means that we must focus on 'relevant facets of character and record of the individual offender.'"

458 U.S. at 798 (*citing Lockett v. Ohio*, 438 U.S. 586 (1978), and *Woodson v. North Carolina*, 428 U.S. 280 (1976)).

In this case, the question of which of the two codefendants fired the fatal shot—and was thus the inherently more culpable party—is central to a capital sentencing determination. *See Green v. Georgia*, 442 U.S. 95, 97 (1979). The forensic findings regarding Thomas' explosiveness, antisocial personality disorder, and violent history—as well as the self-serving nature of his recantation—make it more likely

that Thomas was the shooter and Mr. Sanchez-Torres' sentencing factfinder would have found this compelling. *See, e.g.*, *Freeman v. State*, 858 So. 2d 319, 327 (Fla. 2003) (most factfinders look unfavorably upon antisocial personality disorder); *Cummings v. Sec'y, Dep't of Corrs.*, 588 F.3d 1331, 1368 (11th Cir. 2009) ("[A] diagnosis of antisocial personality disorder" is "not mitigating but damaging"); *Clisby v. Alabama*, 26 F.3d 1054, 1056 (11th Cir. 1994) ("by common definition," those who are antisocial "have little respect for social norms or the rights of others"). This is particularly significant, given that antisocial personality disorder was explicitly rejected as a diagnosis by the mental health experts who evaluated Mr. Sanchez-Torres. (PCR 2564-65, 2610). Instead, Mr. Sanchez-Torres was found to be submissive, dependent, and suffering from cognitive dysfunction. (PCR 2549, 2555, 2610-11). Further, in determining whether this evidence likely would have resulted in a lesser sentence for Mr. Sanchez-Torres, the new evidence must be considered in tandem with other facts, such as Thomas' potential for release after serving a scant 15 years for the same crime underlying Mr. Sanchez-Torres' death sentence.

Further, although the trial court did not explicitly rely on a triggerman finding to sentence Mr. Sanchez-Torres to death, the new evidence of Thomas' triggerman status, incredibility as demonstrated by his self-serving recantation, and history of violent, explosive, and antisocial behavior would have greatly altered the balance of aggravating and mitigating circumstances in Mr. Sanchez-Torres' case.

For instance, in sentencing Mr. Sanchez-Torres to death, the trial court rejected the proposed statutory mitigating circumstance that Mr. Sanchez-Torres was an accomplice or minor participant by relying on Thomas' purported credibility:

> In addition, the Court was presented with competent evidence that Defendant may have in fact been the individual who pulled the trigger…The co-defendant consistently denied being the person who shot [Colon] and always maintained that he stayed in the car when Defendant got out, robbed and shot the victim. On the other hand, Defendant's description of the events changed several times as he was interviewed by law enforcement.
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> * * * * *
>
> The various inconsistencies in Defendant's statements regarding his involvement in the robbery of [Colon] cause the Court to question the credibility of Defendant's present claim that [Thomas] was the triggerman. Furthermore, Defendant's written statement corroborates [Thomas'] consistent account of the events in question, most notably [Thomas'] assertion that he never got out of the car during the robbery and that Defendant was the person who shot and killed [Colon].

(5 R 885-86). Thus, although the trial court declined to rest findings regarding aggravation on Mr. Sanchez-Torres being the shooter, it also rejected mitigation regarding Mr. Sanchez-Torres *not* being the shooter.

Now, however, Thomas has admitted to being outside the car during the robbery and shooting. He gave a sworn statement confessing to being the shooter and unambiguously stating that he had received no promises or offerings in exchange for that confession. Then, over a year later and a scant two weeks prior to a resentencing in which he was arguing that he was a minor participant in the crime, Thomas made a recantation of that confession. This "self-serving" recantation is not credible because it was made to limit the potential sentence he faced. *See Archer v. State*, 934 So. 2d 1187, 1198 (Fla. 2006). Given the trial court's reliance on Thomas' supposed

consistency in rejecting a compelling statutory mitigator directly related to relative culpability, the new evidence related to Thomas' inconsistencies would have weighed strongly in favor of finding the statutory mitigating circumstance of Mr. Sanchez-Torres' minor participation.

Even if the new evidence did not result in a finding of the statutory mitigating circumstance, it would still establish that Thomas was likely the more culpable codefendant and that a death sentence was not appropriate for Mr. Sanchez-Torres. Separate from any statutory mitigating circumstance, relative culpability of codefendants is a persuasive consideration when weighing the balance of aggravators and mitigators. Further, the new information regarding Thomas' inconsistencies must be viewed in tandem with the new information of Thomas' antisocial personality disorder, explosiveness, and violent history toward his peers without provocation. Taken together, the new facts show the likelihood that Thomas was the triggerman and the more culpable codefendant. This likelihood is further heightened when viewed alongside the expert testimony from Mr. Sanchez-Torres' case. Mr. Sanchez-Torres does *not* have antisocial personality disorder, (PCR 2564-65, 2610). Indeed, the opposite is true: his personality is submissive and dependent. (PCR 2555, 2610-11). And, although chronologically older than Thomas by less than two years, Mr. Sanchez-Torres' impaired cognitive function and brain development negated this age difference.

Considered holistically, the new evidence regarding Thomas would have significantly altered the balance of aggravation and mitigation in Mr. Sanchez-

Torres' case; would have had a strong impact on the court's determination of Mr. Sanchez-Torres' sentence; and would likely have resulted in a sentence of less than death. This new information clearly establishes that Mr. Sanchez-Torres is not among those "whose extreme culpability makes them 'the most deserving of execution,'" *Roper*, 543 U.S. at 568. His death sentence and the rationale the Florida Supreme Court has used to uphold it violate the Eighth Amendment. This Court's intervention is necessary.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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