No.

IN THE SUPREME COURT OF THE UNITED STATES

FREDDIE QUINN, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

CAREY HAUGHWOUT
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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

FREDDIE QUINN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2022-3362

[November 30, 2023]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Daliah H. Weiss, Judge; L.T. Case No. 2021CF005828AMB.

Carey Haughwout, Public Defender, and Paul Edward Petillo, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Anesha Worthy, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

KLINGENSMITH, C.J., FORST and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Filing # 187404314 E-Filed 12/05/2023 03:21:16 PM

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

FREDDIE QUINN,
Appellant,

CASE NO.: 4D22-3362

v.

STATE OF FLORIDA,
Appellee.
_____/

MOTION FOR REHEARING AND MOTION TO CERTIFY A QUESTION OF GREAT PUBLIC IMPORTANCE

Appellant Freddie Quinn, through counsel, moves for rehearing and to certify a question of great public importance. These are the grounds:

This Court affirmed appellant's conviction and sentence without written opinion ("Per Curiam. Affirmed."). The Florida Supreme Court has no jurisdiction to review this decision. *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). Ordinarily, this opinion would be final and appellant could seek review directly in the United States Supreme Court. *See Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136, 139 n.4 (1987) (acknowledging that "[u]nder Florida law, a per curiam affirmance issued without opinion cannot be

appealed to the State Supreme Court" and therefore petitioner "sought review directly in this Court.").

But the State has argued in five pending cases in the United States Supreme Court that the petitioners' failure to move to certify a question of great public importance meant that they did not pursue every available avenue of review in the Florida Supreme Court and therefore the United States Supreme Court has no jurisdiction. *See Jackson v. Florida*, No. 23-5570; *Crane v. Florida*, No. 23-5455; *Morton v. Florida*, No. 23-5579; *Sposato v. Florida*, No. 23-5575; *Arrellano-Ramirez v. Florida*, No. 23-5567. Accordingly, appellant moves for rehearing and to certify a question of great public importance.

Although appellant asked this Court to certify a question of great public importance in the reply brief, the State had no ability to address that request. It now has that opportunity, should it wish to address this motion.

Whether the Sixth Amendment requires a twelve-person jury because that is what "trial by an impartial jury" meant at the Sixth Amendment's adoption is a question of great public importance.

Therefore, this Court should grant rehearing and certify this question as one of great public importance:

> DOES THE SIXTH AMENDMENT REQUIRE A TWELVE-PERSON JURY IN ALL FELONY CASES?

WHEREFORE, appellant respectfully moves this Court for rehearing and to certify a question of great public importance.

Respectfully submitted

CAREY HAUGHWOUT
Public Defender, 15th Judicial Circuit

/s/ PAUL EDWARD PETILLO
Paul Edward Petillo
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion has been furnished to Anesha Worthy, Assistant Attorney General, 1515 N. Flagler Dr., Suite 900, West Palm Beach, FL 33401 by e-service at CrimAppWPB@MyFloridaLegal.com; and electronically filed with this court on this 5th day of December, 2023.

/s/ PAUL EDWARD PETILLO
Paul Edward Petillo
Assistant Public Defender

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

January 4, 2024

FREDDIE QUINN, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2022-3362** L.T. No. - 502021CF005828

BY ORDER OF THE COURT:

ORDERED that Appellant's December 05, 2023 motion for rehearing and certification is denied.

Served:
Attorney General-W.P.B.
Paul Edward Petillo
Palm Beach Public Defender
Anesha Worthy

KR

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
4D2022-3362 January 4, 2024

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2022-3362 January 4, 2024

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION "S"

STATE OF FLORIDA, CASE NO. 21CF005828AMB

vs.

Freddie Quinn,
Defendant.
_____/

DEFENDANT'S OBJECTION TO A SIX-PERSON JURY AND MOTION FOR A TWELVE-PERSON JURY

Freddie Quinn, through counsel, objects to a six-person jury, and he moves for a twelve-person jury. He argues that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with a felony. Specifically, the State amended his information to two counts that are now punishable by life (PBL).

The defendant recognizes that the state constitution provides that the "qualifications and the number of jurors, not fewer than six, shall be fixed by law," *see* art. I, § 22, Fla. Const.; that section 913.10, Florida Statutes, provides for six jurors except in capital cases (see also Fla. R. Crim. P. 3.270); and that the Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible. However, as explained below, *Williams* is impossible to square with the Supreme Court's ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which concluded that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the Sixth Amendment's adoption," *id*. at 1395. And a party that seeks reversal of current precedent must preserve that issue like any other. *See Espinosa v. State*, 626 So. 2d 165, 167 (Fla. 1993) (holding that issue was waived notwithstanding there was adverse authority that foreclosed it); *Beltran-Lopez v. State*, 626 So.

2d 163, 164 (Fla. 1993) (same); *see*, *e.g., Hollingsworth v. State*, 293 So. 3d 1049, 1051 (Fla. 4th DCA 2020), *rev. denied*, 2020 WL 5902598 (Fla. Oct. 5, 2020). Therefore, the defendant objects to a six-person jury and moves for a twelve-person jury on the following grounds.

Prior to 1970, subjecting a defendant charged with a felony to a trial with only six jurors would indisputably violate his or her Sixth Amendment rights. As the *Ramos* Court observed, Blackstone recognized that under the common law, "no person could be found guilty of a serious crime unless 'the truth of every accusation … should … be confirmed by the unanimous suffrage of twelve of his equals and neighbors[.]" 140 S. Ct. at 1395. "A 'verdict, taken from eleven, was no verdict' at all." *Id*.

After the Sixth Amendment was enacted, state courts interpreted it to require a twelve-person jury. *See Miller*, *Comment, Six of One Is Not A Dozen of the Other*, 146 U. Pa. L. Rev. 621, 643 n.133 (1998) (collecting cases from the late 1700s to the 1860s). In 1898, the U.S. Supreme Court added its voice to the chorus, noting that the Sixth Amendment protects a defendant's right to be tried by a twelve-person jury. *Thompson v. Utah*, 170 U.S. 343, 349-350 (1898). As the *Thompson* Court explained, since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve people. *Id*. Given that understanding had been accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id*. at 350.

The Supreme Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. For example, in 1900, the Court explained that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of

twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow*, 176 U.S. 581, 586 (1900). Thirty years later, the Court reiterated that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States*, 281 U.S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, jury trial in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana*, 391 U.S. 145, 151-52 (1968).

In 1970, however, the *Williams* Court overruled this line of precedent in a decision that Justice Harlan described as "stripping off the livery of history from the jury trial" and ignoring both "the intent of the Framers" and the Court's long held understanding that constitutional "provisions are framed in the language of the English common law [] and … read in the light of its history." *Baldwin v. New York*, 399 U.S. 117, 122-23 (1970) (citation omitted) (Harlan, J., concurring in the result in *Williams*). Indeed, *Williams* recognized that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Williams*, 399 U.S. at 98-99. But *Williams* concluded that such "purely historical considerations" were not dispositive. *Id*. at 99. Rather, the Court focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id*. at 100-01. According to the *Williams* Court, both "currently available evidence [and] theory"

suggested that function could just as easily be performed with six jurors as with twelve. *Id*. at 101-102 & n.48; *cf*. *Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

Williams's ruling that the Sixth Amendment (as incorporated to the States by the Fourteenth) permits a six-person jury cannot stand in light of *Ramos*. There, the Supreme Court held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca v. Oregon*, 406 U.S. 404 (1972), a decision that it faulted for "subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." 140 S. Ct. at 1401-02.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of "cost-benefit analysis" the Court undertook in *Williams*, observing that it is not the Court's role to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'" 140 S. Ct. at 1400-01. Ultimately, the *Ramos* Court explained, the question is whether "at the time of the Sixth Amendment's adoption, the right to trial by jury included" the particular feature at issue. *Id*. at 1402. As the history summarized above establishes, there can be no serious doubt that the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required—"a verdict, taken from eleven, was no verdict at all." *See* 140 S. Ct. at 1395 (quotation marks omitted).

Even setting aside *Williams's* now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, the *Williams* Court "f[ou]nd little reason to think" that the goals of the jury

guarantee—including, among others, "to provide a fair possibility for obtaining a representative[] cross-section of the community"—"are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Id*. at 100. The Court theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id*. at 102.

In the time since *Williams*, that determination has proven incorrect. Indeed, the Court acknowledged as much just eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams'* assumptions. For example, Ballew noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation," *id*. at 233, (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id*. at 234, (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id*. at 236; and (4) decreasing jury sizes "foretell[] problems … for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id*. at 236-37. Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id*. at 239; *see also id*. at 245-46 (Powell, J.) (agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates that "reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury." Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009); *see also* Higginbotham et al*., Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. … In reality, cutting the size of the jury dramatically increases the chance of excluding minorities."). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., *Achieving Diversity on the Jury*, *supra*, at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries "represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Other important considerations also weigh in favor of the twelve-member jury. For instance, studies indicate that twelve-member juries deliberate longer, recall evidence better, and rely less on irrelevant factors during deliberation. *See* Smith & Saks, *The Case for Overturning Williams v. Florida and the Six-Person Jury*, 60 Fla. L. Rev. 441, 465 (2008). Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." *Id*. at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., *Better by the Dozen*, *supra*, at 52.

The origins of Florida's six-person juries are disturbing and further support reversal of existing precedent. The jury of six stems from the dawn of the Jim Crow era, one month after federal troops were withdrawn from the state. The historical background is as follows:

In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903).

The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297–98 (1877) (quoting and discussing Chapter 3010, section 6, Laws of Florida (1877)); *Florida Fertilizer*, 34 So. 15 241 (noting that previously all juries had twelve members).

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* Jerrell H. Shofner, *Reconstruction and Renewal, 1865-1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no federal troops" in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

On its face the 1868 constitution extended the franchise to black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of black citizens. The constitution was the product of a remarkable series of events

including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. *See* Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5-6 (1972); Shofner at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." Hume at 15.

The racist purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." Hume, 15-16. *See also* Shofner 266.

In *Ramos*, Justice Gorsuch noted that the Louisiana non-unanimity rule arose from Jim Crow era efforts to enforce white supremacy. *Id*. at 1394; *see also id.* at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). The history of Florida's jury of six arises from the same historical context.

In view of the foregoing, a jury of six at a felony criminal trial is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution.

Respectfully submitted,

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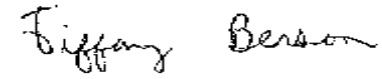

Tiffany Benson
Assistant Public Defender
Fla. Bar No. 0111651

Certificate of Service

I HEREBY CERTIFY that a true and correct copy hereof has been served to Kristen Grimes, Assistant State Attorney, Division "S" OR the Assistant State Attorney currently assigned in STAC at the time of filing, via the STAC case management exchange on this 29 day of October, 2022.

Tiffany Benson
Assistant Public Defender

you deny it.

THE COURT: I'll give the State a little more time if you want to research it further. It was a late-filed motion. So I'll address it a little bit later.

Are there any other pretrial motions? Oh, yes, the objection to six-person jury, Motion for twelve-person jury. Any additional argument?

MS. RUGGIERO: No, Your Honor.

THE COURT: Any response?

MS. BENSON: No, Your Honor.

MS. THANNIKKOTU: Your Honor, the law requires a six-person jury, so I believe Your Honor is legally required to deny it and that is being preserved for appellate issues.

THE COURT: All right. The motion is respectfully denied and the issue is preserved. The law is clear that this is a six-person jury case.

So these are Counts 1 and 2 -- oh, actually let's have him arraigned on the amended Information, Ms. Benson.

MS. BENSON: Yes, Your Honor. At this time, we enter a plea of not guilty, waive

3.3, Ms. Tomsula.

THE COURT: Okay, which brings in Juror 3.4, Ms. Maria. Does the Defense accept?

MS. BENSON: Defense accepts.

THE COURT: Does the State accept?

MS. THANNIKKOTU: The State accepts.

THE COURT: Defense accept accept? We have 1.1, 1.4, 2.6, 3.1, 3.2, 3.4.

MS. THANNIKKOTU: May I have a moment, Your Honor?

THE COURT: Sure.

MS. BENSON: Bear with me, I'm not requesting -- I have to make sure that I get this right. I'm not requesting any additional strikes. I have filed a Motion for a 12-person jury that was denied. It's currently up for review right now at the Supreme Court. This issue, I don't want to waive that issue. I'm concerned if I agree to accept the panel that will waive the issue. So I just want to highlight that I don't have anymore --

THE COURT: You have no additional strikes.

MS. BENSON: No additional cause challenges. We are stuck at the point where I

would accept. However, I cannot accept because I'm objecting still requesting to preserve my issue for the 12-person jury.

THE COURT: So the 12-person jury is the sole issue --

MS. BENSON: That is correct.

THE COURT: -- that you're objecting to. Otherwise you accept with that objection preserved?

MS. BENSON: Yes, that is correct.

THE COURT: Okay. I think --

MS. THANNIKKOTU: Back to me for final acceptance, Judge.

THE COURT: Back to the State for final.

MS. THANNIKKOTU: The State is going to strike Juror 3.4, Ms. Maria.

THE COURT: Which brings in 3.5, Ms. Runkle.

MS. BENSON: Defense accepts.

THE COURT: Does the State accept?

MS. THANNIKKOTU: State accepts.

THE COURT: Does the Defense accept barring the reservation for the objection for the 12-person jury?

MS. BENSON: I unfortunately have been

have them come back to the glass doors at 2 o'clock. They'll be led back into Judge Weiss' courtroom and you guys can come to 11H just before two. If you can get there five, ten minutes before, then we'll be good to go. You all will be good to go.

MS. BENSON: Yes, Your Honor.

THE COURT: Let me just ask because I know that -- Mr. Quinn, I just want to go over -- The jury that's been selected. I understand that you're preserving a right to appeal the issue of having a 12-person jury because that's the request that you made. Aside from that being the case and preserving that right, you have been here for all the jury selection, you have been able to consult with your attorneys, while preserving your right to appeal, that issue, that being held, do you have any additional issues with this jury that's been selected or do you otherwise accept -- otherwise agree to this panel?

THE DEFENDANT: Yes.

THE COURT: All right. Thank you very much.

THE DEFENDANT: Yes.

POINT III

APPELLANT WAS ENTITLED TO A TWELVE-PERSON JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS

Appellant was convicted by a jury comprised of six people. T 393 He argues that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with an offense punishable by more than six months in jail. The standard of review of constitutional claims is de novo. *See A.B. v. Florida Dept. of Children & Family Service*s, 901 So. 2d 324, 326 (Fla. 3d DCA 2005).

This issue is preserved for appellate review. Before trial defense counsel objected in writing, and during jury selection she objected orally, that appellant was entitled to a twelve-person jury under the Sixth and Fourteenth Amendments. R 117-28; T 69, 314-16. She renewed this objection before the jury was sworn. T 321. The trial court overruled these objections. T 69, 321. Thus, defense counsel preserved this issue for appellate review. *See generally Baccari v. State*, 145 So. 3d 958, 961 (Fla. 4th DCA 2014) (to preserve jury selection issues for appellate review counsel must renew the objection before the jury is sworn).

And even if defense counsel had not objected, appellant could raise this issue on appeal. This is because the issue isn't whether appellant preserved this issue by objecting in the trial court; the issue is whether he personally waived his constitutional right to a twelve-person jury, and he did not. For example, even if defense counsel had no objection to a five-person jury, but the trial court did not secure the defendant's personal waiver of his or her right to a six-person jury, the case would present reversible error on appeal. *Wallace v. State*, 722 So. 2d 913, 914 (Fla. 2d DCA 1998); *Gamble v. State*, 696 So. 2d 420, 420 (Fla. 5th DCA 1997); *Blair v. State*, 698 So. 2d 1210, 1217-18 (Fla. 1997); *see also Johnson v. State*, 994 So. 2d 960, 963-64 (Fla. 2008) (holding that defendant must personally waive constitutional right to have jury decide prior-convictions element in felony DUI case; defense counsel's stipulation that trial court act as factfinder is insufficient); *but see Albritton v. State*, 48 Fla. L. Weekly D922 (Fla. 4th DCA May 3, 2023).

The Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible. But *Williams* is impossible to square with the Court's ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which

concluded that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the Sixth Amendment's adoption," *id.* at 1395. This full-scale embrace of the fixed-meaning canon,[1] means that trial by a six-person jury violates the Sixth and Fourteenth Amendments to the United States Constitution.

Appellant acknowledges that this Court rejected this argument in *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *rev. denied*, No. SC22-1597 (Fla. June 6, 2023). Guzman will be seeking review in the United States Supreme Court. Appellant raises this issue to keep his case in the appellate pipeline. *See Hollingsworth v. State*, 293 So. 3d 1049, 1051 (Fla. 4th DCA 2020), *rev. denied*, 2020 WL 5902598 (Fla. Oct. 5, 2020) ("Appellate counsel acted in good faith and did not deserve the court's criticism [for arguing that existing law should be reversed]."); *Sandoval v. State*, 884 So. 2d 214, 216 n.1 (Fla. 2d DCA 2004) ("Counsel has the responsibility to make

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[1] *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022) (the meaning of the Constitution "is fixed according to the understandings of those who ratified it"); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012) ("Words must be given the meaning they had when the text was adopted."),

such objections at sentencing as may be necessary to keep the defendant's case in an appellate 'pipeline.'"); *see also* R. Regulating Fla. Bar 4-3.1 (stating that a lawyer may assert an issue involving "a good faith argument for an extension, modification, or reversal of existing law"); *United States v. Marseille*, 377 F. 3d 1249, 1257 & n.14 (11th Cir. 2004) (defendant making an argument he knows must lose for purposes of preserving it for a later court).

In rejecting Guzman's argument, this Court cited *State v. Khorrami*, 1 CA-CR 20-0088, 2021 WL 3197499 (Ariz. Ct. App. July 29, 2021). *Guzman*, 350 So. 3d at 73. At the time of this Court's decision, Khorrami's petition for writ of certiorari in the United States Supreme Court was pending. The petition was subsequently denied, over dissents by Justice Gorsuch, who wrote an opinion stating that he would grant the writ, and Justice Kavanaugh. *Khorrami v. Arizona*, 21-1553, 2022 WL 16726030 (U.S. Nov. 7, 2022). (This Court should compare Justice Gorsuch's opinion that a twelve-person jury is constitutionally required with the First District's recent opinion that said that that position was "nearly frivolous." *Brown v. State*, 48 Fla. L. Weekly D775, D777 n.1 (Fla. 1st DCA Apr. 12, 2023).)

Although there is no legal significance to the denial of a petition for writ of certiorari,[2] there are differences between Florida's and Arizona's systems that may account for the denial of the writ.

In Arizona, criminal defendants are guaranteed "a twelve-person jury in cases when the sentence authorized by law is death or imprisonment for thirty years or more…. Otherwise, a criminal defendant may be tried with an eight-person jury." *State v. Khorrami*, 2021 WL 3197499, at *8 (citations omitted). Florida juries are smaller (six versus eight), and those smaller juries are mandated in every case except capital cases.

And the origin of Florida's rule is disturbing. In his dissent, Justice Gorsuch observed: "During the Jim Crow era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*,

[2] *See Ramos v. Louisiana*, 140 S.Ct. 1390 (2020) at n.56 ("The significance of a denial of a petition for certiorari ought no longer require discussion. This Court has said again and again and again that such a denial has no legal significance whatever bearing on the merits of the claim.") (cleaned up).

2022 WL 16726030, at *5 (Gorsuch, J., dissenting) (citations omitted). He noted, however, that Arizona's law was likely motivated by costs not race. *Id*. But Florida's jury of six did arise in that Jim Crow era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Id*. The historical background is as follows:

In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903).

The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. at 241.

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* Jerrell H. Shofner, *Reconstruction and*

Renewal, 1865-1877, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no federal troops" in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

On its face the 1868 constitution extended the franchise to black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of black citizens. The constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. *See* Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5-6 (1972); Shofner at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native

whites to frame a constitution designed to continue white dominance." Hume at 15.

The purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." Hume, 15-16. *See also* Shofner 266.

Smaller juries and non-unanimous verdicts were part of a Jim Crow era effort "to suppress minority voices in public affairs." *Khorrami v. Arizona*, 2022 WL 16726030, at *5 (Gorsuch, J., dissenting); *see also Ramos*, 140 S. Ct. at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). The history of Florida's jury of six arises from the same historical context.

Appellant's conviction by a six-person jury violates the Sixth and Fourteenth Amendments. As Justice Gorsuch stated:

> For almost all of this Nation's history and centuries before that, the right to trial by jury for serious criminal offenses meant the right to a trial before 12 members of the community. In 1970, this Court abandoned that ancient promise and enshrined in its place bad social science parading as law. That mistake continues to undermine the integrity of the Nation's judicial proceedings and deny the American people a liberty their predecessors long and justly considered inviolable.

Khorrami v. Arizona, 2022 WL 16726030, at *5 (Gorsuch, J., dissenting).

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

SENTENCE
(As to Count(s) 1, 2)

Defendant: Freddie Quinn

Case Number: 2021CF005828AXXMB

OBTS Number: _____

The Defendant, being personally before this Court, accompanied by the defendant's attorney of record, APD, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why Defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of $_____ pursuant to § 755.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 938.04, Florida Statutes.

The Defendant is hereby committed to the custody of the
[X] Department of Corrections
[ ] Sheriff of Palm Beach County, Florida

[ ] Department of Corrections as a youthful offender
For a term of 50 years. It is further ordered that the Defendant shall be allowed a total of 120 days as credit for time incarcerated prior to imposition of this sentence. It is further ordered that the composite term of all sentences imposed for the counts specified in the order shall run
[ ] consecutive to [X] concurrent with (check one) the following:
[ ] Any active sentence being served.
[X] Specific sentences: CTS. 1, 2, 3

[ ] The instant sentence is based upon the Court having previously placed the Defendant on probation and having subsequently revoked the Defendant's probation for violation(s) of condition(s)_____.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

[ ] The Sentencing Court objects to the Defendant being placed into the Youthful Offender Basic Training Program pursuant to Florida Statute §958.045.

[ ] Pursuant to §322.055, 322.056, 322.26, 322.274, Florida Statutes, The Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of the Court is Ordered to report the conviction and revocation to the Department of Highway Safety and Motor Vehicles.

DONE AND ORDERED in Open Court at West Palm Beach, Palm Beach County, Florida this 16 day of DEC., 2022.

FILED
Circuit Criminal Department
DEC 16 2022
JOSEPH ABRUZZO
Clerk of the Circuit Court & Comptroller
Palm Beach County

_____
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

SENTENCE
(As to Count(s) 3)

Defendant: Freddie Quinn

Case Number: 2021CF005828AXXMB

OBTS Number: _____

The Defendant, being personally before this Court, accompanied by the defendant's attorney of record, APD, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why Defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of $_____ pursuant to § 755.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 938.04, Florida Statutes.

The Defendant is hereby committed to the custody of the
[X] Department of Corrections
[ ] Sheriff of Palm Beach County, Florida

[ ] Department of Corrections as a youthful offender
For a term of 15 years. It is further ordered that the Defendant shall be allowed a total of 120 days as credit for time incarcerated prior to imposition of this sentence. It is further ordered that the composite term of all sentences imposed for the counts specified in the order shall run
[ ] consecutive to [X] concurrent with (check one) the following:
[ ] Any active sentence being served.
[X] Specific sentences: CTS. 1, 2, 3
[ ] The instant sentence is based upon the Court having previously placed the Defendant on probation and having subsequently revoked the Defendant's probation for violation(s) of condition(s)_____.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

[ ] The Sentencing Court objects to the Defendant being placed into the Youthful Offender Basic Training Program pursuant to Florida Statute §958.045.

[ ] Pursuant to §322.055, 322.056, 322.26, 322.274, Florida Statutes, The Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of the Court is Ordered to report the conviction and revocation to the Department of Highway Safety and Motor Vehicles.

DONE AND ORDERED in Open Court at West Palm Beach, Palm Beach County, Florida this 16 day of DEC, 2022

FILED
Circuit Criminal Department
DEC 16 2022
JOSEPH ABRUZZO
Clerk of the Circuit Court & Comptroller
Palm Beach County

_____
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

SENTENCE WITH SPECIAL PROVISIONS

(As to Count(s) 1,2,3)

Defendant: Freddie Quinn

Case Number: 2021CF005828AXXMB

OBTS Number: _____

The Defendant, being personally before this Court, accompanied by the defendant's attorney of record, APD, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why Defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

By reference to count, the following additional provisions apply to the sentence imposed:

Count

FIREARM
It is further ordered that the _____ (___) year minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

PRISON RELEASEE RE-OFFENDER
The Defendant is adjudicated a prison release re-offender and has been sentenced in accordance with the provisions of Florida Statute 775.082(9). The Defendant shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Additionally, the Defendant must serve 100 percent of the statutory maximum. The requisite findings by the Court are set forth in a separate order or stated in the record in Open Court.

DRUG TRAFFICKING
It is further ordered that the _____ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF SCHOOL
It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

HABITUAL FELONY OFFENDER
The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in Open Court.

HABITUAL VIOLENT FELONY OFFENDER
The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings by the Court are set forth in a separate order or stated on the record in Open Court.

THREE TIME VIOLENT FELONY OFFENDER
The Defendant is adjudicated a three-time violent felony offender and has been sentenced in accordance with the provisions of Florida Statute 775.084(4)(c). The requisite findings by the Court are set forth in a separate order or stated in the record in Open Court.

VIOLENT CAREER CRIMINAL
The Defendant is adjudicated a habitual violent offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084(4)(d). A minimum term of _____ years must be served prior to release. The requisite findings by the Court are set forth in a separate order or stated in the record in Open Court.

DUI MANSLAUGHTER
It is further ordered that the Defendant shall serve a mandatory minimum of four (4) years before release in accordance with Florida Statute 316.193.

LAW ENFORCEMENT PROTECTION ACT
It is further ordered that the Defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. (Offenses committed before January 1, 1994)

CRIMES AGAINST LAW ENFORCEMENT OFFICERS (check one)
[____] The Defendant having been convicted of Aggravated Assault on a Law Enforcement Officer, it is further ordered that the Defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(2)(c).
[____] The Defendant having been convicted of Aggravated Battery on a Law Enforcement Officer, it is further ordered that the Defendant shall serve a minimum of 5 years before release in accordance with Florida Statute 784.07(2)(d).
[____] The Defendant having been convicted of Battery on a Law Enforcement Officer and having possessed a firearm or destructive device during the commission of said offense, it is further ordered that the Defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(3)(a).

CAPITAL OFFENSE
It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes. (Offenses committed before October 1, 1995)

SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN
It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994)

TAKING A LAW ENFORCEMENT OFFICER'S FIREARM
It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994)

SEXUAL OFFENDER/SEXUAL PREDATOR DETERMINATIONS:

Cts. 1, 2, 3 SEXUAL PREDATOR
The Defendant is adjudicated a sexual predator as set forth in section 775.21, Florida Statutes.

SEXUAL OFFENDER
The Defendant meets the criteria for a sexual offender as set forth in section 943.0435(1)(a)1a., b., c., or d.

AGE OF VICTIM
The victim was _____ years of age at the time of the offense.

AGE OF DEFENDANT
The Defendant was _____ years of age at the time of the offense.

Case No 2021CF005828AXXMB
Defendant: F. QUINN

RELATIONSHIP TO VICTIM
The Defendant is not the victim's parent or guardian.

SEXUAL ACTIVITY [F.S. 800.04(4)]
The offense _____ did _____ did not involve sexual activity.

USE OF FORCE OR COERCION [F.S. 800.04(4)]
The sexual activity described herein _____ did _____ did not involve the use of force or coercion.

USE OF FORCE OR COERCION/UNCLOTHED GENITALS [F.S. 800.04(5)]
The molestation _____ did _____ did not involve unclothed genitals or genital area.
The molestation _____ did _____ did not involve the use of force or coercion.

OTHER PROVISIONS:

CRIMINAL GANG ACTIVITY
The felony conviction is for an offense that was found, pursuant to section 874.04, Florida Statutes, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

RETENTION OF JURISDICTION
The Court retains jurisdiction over the Defendant pursuant to section 947.16(4), Florida Statutes.

SUSPENDED AND/OR SPLIT SENTENCES:

Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in a separate order entered herein.

However, after serving a period of _____ imprisonment the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections, according to the terms and conditions of probation as set forth in a separate order entered herein.

Followed by a period of _____ on probation under the supervision of the Department of Corrections, according to the terms and conditions of probation as set forth in a separate order entered herein.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

DONE AND ORDERED in Open Court at Palm Beach County, Florida on this 16 day of DEC., 20 22.

Circuit Judge