No.

IN THE SUPREME COURT OF THE UNITED STATES

CLIFTON BEAN, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

PETITIONER FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Sixth, and Fourteenth Amendments guarantee the right to a trial by a twelve person jury when the defendant is charged with a felony that requires a life sentence without the possibility of parole if convicted?

RELATED PROCEEDINGS

The proceeding listed below is directly related to the above-captioned case in this Court

Bean v. State, No. 2D2023-0450 (Fla. 2nd D.C.A. July 16, 2024).

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PETITION FOR A WRIT OF CERTIORARI

Clifton Bean respectfully petitions for a writ of certiorari to review the judgment in this case of the Second District Court of Appeal of Florida.

OPINION BELOW

The opinion of Florida's Second District Court of Appeal is not yet reported by West, but is available on the District Court's website, Google Scholar, and is represented in the appendix. A2.

JURISDICTION

Florida's Second District Court of Appeal affirmed Bean's conviction and sentence with the mandate issued on July 16, 2024. A3. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

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

Section 1 of the Fourteenth Amendment of the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property without due process of law…"

STATEMENT OF THE CASE

Petitioner, Clifton Bean, was sentenced to die in prison after being convicted of sex offenses by a six person jury. A6-A11. He appealed to the Second District Court of Appeal of Florida. Relying on *Ramos v. Louisiana*, 590 U.S. 83 (2020), he argued that he was entitled under the Sixth and Fourteenth Amendments to a twelve person jury. A12-A23. The District Court rejected his argument without explanation, issuing a per curiam affirmed decision. A2. The Second District Court of Appeal denied Mr. Bean's Motion to Certify a Question of Great Public Importance which would have allowed the Florida Supreme Court to review the issue. A5. The Second District Court of Appeal is the state court of last resort for this case.

REASONS FOR GRANTING THE PETITION

WILLIAMS IS NO LONGER GOOD LAW AND A JURY OF TWELVE IS REQUIRED TO SENTENCE A DEFENDANT TO LIFE WITHOUT THE POSSIBILITY OF PAROLE

When the six members of the jury in this case found Mr. Bean guilty of sexual battery upon a child less than 12 years of age, unbeknownst to them they had condemned Mr. Bean to die in prison. Florida law requires a mandatory sentence of prison until death with no chance of parole for his charges. *Florida Statutes 794.011 & 775.082*. The United States Constitution as interpreted by this Court in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), requires a jury of no less than twelve members to determine the outcome of criminal cases. Under the Sixth and Fourteenth Amendment to the U.S. Constitution Mr. Bean was entitled to a jury of twelve to determine guilt in his case. The failure to provide a twelve member jury to Mr. Bean necessitates a reversal of all convictions and a remand to the trial court for a new trial before a sufficient jury.

The Sixth Amendment to the U.S. Constitution grants criminal defendants the right to a trial by an impartial jury. This Court held the "text and structure of the Constitution clearly suggest that the term 'trial by an impartial jury' carried with it *some* meaning about the content and requirements of a jury trial." *Ramos* at 1395. This Court held that the phrase "trial by an impartial jury" should carry the meaning it would at the time of the Sixth Amendment's adoption. *Id*. While this Court in *Ramos* was examining the Sixth Amendment's application to the

requirement of unanimous juries, the same analysis should apply to what a "trial by an impartial jury" means in all respects.

This Court looked at common law, state practices in the founding era, and opinions and treatises written soon afterward. These same sources of meaning all lead to the same conclusion: a trial by an impartial jury requires a jury of at least twelve.

Common Law and Treatises

Common law requires a twelve person jury. The guiding commentary the Court used in *Ramos*, William Blackstone's *Commentaries on the Laws of England*, confirms this. This Court quoted Blackstone when he wrote "the truth of every accusation... should ... be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion." 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769). This Court also quoted Professor James Bradley Thayer's *A Preliminary Treatise on Evidence at the Common Law*, when it noted a "verdict, taken from eleven, was no verdict" at all. Thayer 88-89, n. 4 (quoting Anonymous Case, 41 Lib. Assisarum 11 (1367)). It is clear that common law held a twelve person jury to be the minimum size required to take someone's liberty. It is clear that the common law and treatises written near the time the Constitution was ratified support the assertion that the Founders expected juries to consist of twelve members. A review of state law from the time will show the same.

State Practices in the Founding Era

Analysis of the understanding in the states near the time the Constitution was adopted shows the same understanding across the young nation. The states understood a jury needed twelve members.

Delaware's first constitution was written in 1776. More recently Delaware's supreme court found "*All* of the fundamental features of the right to trial by jury, as they existed at common law, have been preserved by the Delaware Constitution." *Claudio v. State*, 585 A. 2d 1278 at 1301 (Del. 1991). "It has also been expressly recognized that the Delaware Constitution guarantees the common law right to a trial by a jury of twelve persons in a criminal proceeding." *Id.*

In Pennsylvania, the right to a jury of twelve had been understood and guaranteed to its people for over 200 hundred years according to their supreme court when that court addressed the issue in 1993. *Blum v. Dowell Merrill Dow Pharmaceuticals*, 534 Pa. 97 at 119 (Pa. 1993). Pennsylvania's supreme court found that "because of Pennsylvania's history and case law, a jury must be composed of twelve persons where that right existed at common law". *Id.*

In New Jersey in 1780, the state supreme court engaged in what is frequently cited as the first instance of judicial review in the case of *Holmes v. Walton*.[1] When the legislature attempted to institute a jury of six in some crimes, the New Jersey Supreme Court ruled that such a change would violate the state's constitution.

[1] *Holmes v. Walton* has been commented on for centuries, but predates modern court opinion practices and has no citation or written record of the decision pronounced.

Justin W. Aimonetti, *Holmes v. Walton and its Enduring Lessons for Originalism*, 106 Marq. L. Rev. 73 (2022). The state's constitution, adopted in 1776, stated only "that the inestimable Right of Trial by Jury shall remain confirmed, as a Part of the Law of this Colony without Repeal for ever." The *Holmes* Court knew that the right to jury meant the right to a jury of twelve.

Maryland adopted the common law expectations of juries in their 1776 constitution. Section III of that constitution held that "the inhabitants of Maryland are entitled to the common law of England, and the trial by Jury, according to that law". As previously discussed, common law required a jury of no less than twelve.

In *Opinion of the Justices*, 41 N.H. 550 at 552 (N.H. 1860), the same opinion from the New Hampshire this Court quoted in *Ramos*, the court held that under New Hampshire law the meaning of the phrase "trial by jury" at the time the state constitution was adopted required no less than twelve members on any jury. The New Hampshire Supreme Court affirmed this position again in *Opinions of the Justices*, 121 N.H. 480 (N.H. 1981).

Virginia enshrined the right to a twelve person jury in their 1776 Declaration of Rights. Section 8 of that Declaration of Rights states "That in all capital or criminal prosecutions a man has a right to… a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty".

New York viewed a jury as requiring twelve members when the Sixth Amendment was ratified. In *People v. Gajadhar*, 9 N.Y.3d 438 at 442 (N.Y. App.

2007), the court recognized that the "common-law tradition of a 12-person jury was exported to America in the colonial era and gained explicit recognition in the original Charter of Liberties and Privileges enacted by the first Legislature in 1683". It went on to recognize that upon adopting its first constitution, that although "the constitution of 1777 did not specifically refer to the number 12, it provided that the right to a jury trial as it existed in New York before the adoption of the constitution was to be continued". *Id.*

The Rhode Island Supreme Court noted multiple instances of twelve person jury requirements early in the state's history when they reviewed that history in *Opinion to Senate*, 278 A. 2d 852 (R.I. 1971). In the mid-1600s their general assembly required all juries to be composed of twelve men. *Id.* at 856. The court found that from the earliest days of the colony to when the state adopted its first constitution in 1842, various acts of the legislature showed "an unwavering adherence to a petit jury composed of twelve persons". *Id.* When their constitution was adopted in 1842 "a trial by jury was synonymous with a trial by a jury of twelve." *Id.* at 857.

Ramos Overrules Williams

Florida courts have relied on *Williams v. Florida*, 399 U.S. 78 (1970) to deny requests for twelve person juries in the wake of *Ramos*.[2] It is clear from the language of *Ramos* that the permission to try criminal cases with a six person jury

[2] *See Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *Morales-Alaffita v. State*, 376 So. 3d 791 (Fla. 2nd DCA 2023)

is no longer granted. The U.S. Supreme Court will not entertain stare decisis for a case that was "egregiously wrong from the start." *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 at 2243 (2022). As Justice Gorsuch states, "*Williams* was wrong the day it was decided, it remains wrong today, and it impairs both the integrity of the American criminal justice system and the liberties of those who come before our Nation's courts." *Khorrami v. Arizona,* 143 S. Ct. 22 at 23 (2022).

In 1898, Utah attempted to retry a defendant charged with a felony with a jury of eight after a mistrial with a jury of twelve. This Court found this unconstitutional and that "the jury referred to in the original Constitution and in the Sixth Amendment is a jury constituted, as it was at common law, of twelve persons". *Thompson v. Utah*, 170 US 343 at 349 (1898). The Supreme Court held in *Thompson* that twelve was the required number of jurors under the Constitution.

This was the Court's position until overruling *Thompson* in *Williams*. *Williams* relied on questionable and recent social science, rather than the intent of the authors of the Constitution, to support their contention that six jurors made no difference compared to twelve jurors. In *Ballew v. Georgia*, 435 US 223 (1978), this Court reexamined social science, particularly that which was spawned in reaction to *Williams*, and found that the size of the jury was important. "Generally, a positive correlation exists between group size and the quality of both group performance and group productivity." *Ballew* at 232. What social scientists have said on the issue in 1970, 1978, and 2024 does not matter. The philosophy of *Ramos* requires courts to

ignore the social science of the day and rely solely on the words written in the Constitution and what the writers meant when they were written.

Justice Thomas notes in his concurrence in *Ramos* that the majority in that case undertakes a "fresh analysis of the meaning of 'trial…by an impartial jury'". *Ramos* at 1421. As the majority in *Ramos* has taken a fresh look at what an impartial jury is, it is now *Ramos* that stands as the governing law in this area. All decisions that conflict with *Ramos*'*s* interpretation of how to read the Constitution when it comes to an impartial jury were overturned by that decision. Florida courts have refused to recognize that truth unless they hear it directly from this Court. Mr. Bean respectfully requests this Court now explain as much to the courts of Florida.

Overruling Williams

Mr. Bean argues that *Williams* was overruled with the decision in *Ramos*. Courts in Florida have disagreed. Should this Court share the belief that *Williams* has not yet been overruled, it should formally overrule *Williams* now. This Court recognized factors to be considered when deciding if a precedent should be overruled in *Dobbs*. Mr. Bean will now address each factor.

The nature of the Court's error. *Williams* was flagrantly incorrect when it was decided and remains so today. The State of Florida filed 156,007 cases involving felony charges in just the 2022-2023 fiscal year.[3] All but those charged with a crime

[3] Trial Court Statistical Reference Guide, Overall Statistics, p.2-3 "https://www.flcourts.gov/Publications-Statistics/Statistics/Trial-Court-Statistical-Reference-Guide"

in which the death penalty was at issue were provided a jury of six if the case went to trial.[4] Millions of cases in Florida alone have been resolved or tried with only a jury of six to protect the accused from the powers of the government as a result of the *Williams* ruling.

The quality of the reasoning. *Williams* failed to look at the plain meaning of what a jury was for those who wrote the Sixth Amendment. *Williams* instead substituted poor social science which has been rebuked.

Williams attempted to suggest that because the Sixth Amendment made no provision for judicial districts and instead left those determinations to Congress that the meaning of a jury trial in 1791 to those that ratified the amendment no longer mattered. *Williams* specifies that unanimity was left out of the amendment and thus no longer required for conviction, an interpretation we know from *Ramos* to be incorrect.

Williams abandoned the idea of applying the 1791 understanding of the word jury. Instead, the Court decided the inquiry "must be the function that the particular feature performs and its relation to the purposes of the jury trial". *Williams* at 99. The Court in *Bellew* recognized

> "recent empirical data suggest that progressively smaller juries are less likely to foster effective group deliberation. At some point, this decline leads to inaccurate fact-finding and incorrect application of the common sense of the community to the facts. Generally, a positive correlation exists between group

[4] *See Morales-Alaffita v. State*, 376 So. 3d 791 (Fla. 2nd DCA 2023).

size and the quality of both group performance and group productivity." *Bellew* at 232.

Despite this recognition, the *Bellew* Court failed to give weight to the studies they cited which found a smaller jury size increased the rate of conviction, limiting the decision to the issue of five jurors, as Georgia was using, being insufficient. In Pabst, *Statistical Studies of the Costs of Six-Man versus Twelve-Man Juries*, 14 Wm. & Mary L. Rev. 326 (1972), Pabst noted,

> "using traditional binomial sampling theory, David Walbert has concluded that the probability of conviction with the six-man jury may be higher for 'weak' cases than for 'strong' cases. Herbert Friedman also used sampling operating characteristic curves to show the effects which may result from a reduction in jury size as well as from the lessening of the unanimity requirement. Moreover, in bitterly opposing the reduction, Hans Zeisel has noted critically the probability that fewer minority groups will be included on the six-man jury."

Studies contradicting the ones used in *Williams* have long been present, but this Court has not recognized that these studies alone make the holding of *Williams* false.

In 2021, the National Center for State Courts compiled studies that examined the differences between 6 and 12 member juries. Boyce, *Time to Reflect, Has the research changed regarding the importance of jury size?* https://www.ncsc-jurystudies.org/__data/assets/pdf_file/0024/71619/Jury-Size-Report

.pdf (2021). Smaller juries have greater variability and are more unpredictable. Larger juries were able to recall more of the evidence. Larger juries increase the likelihood of having more than one person in the minority of opinion and having more than one person in the minority of opinion makes them both less likely to conform to the majority. Larger panels encompass more diverse viewpoints. Some researchers concluded larger juries led to more accurate verdicts because they are more likely to remember evidence and more likely to have a thorough debate on the merits of the case. Larger juries increase the chances of a racial minority being on the jury which is of particular note in this case where Mr. Bean, a Black man, objected to the lack of racial minorities on his jury. All white juries convicted Black defendants significantly more than white defendants but there is no difference in conviction rates based on race when there is even one Black person on the jury.

Workability. From an ease of application perspective, *Williams* and *Bellew* provide a bright-line rule that is easy to follow: juries must have at least six members when the death penalty is not an issue. The ease of application is part of the problem in that the National Center for State Courts reports four states lowered their jury size for felony cases after *Williams*. *Time to Reflect*, p. 2. Correcting the error by returning to a twelve person jury will have the same ease of application with a corrected bright-line rule imposed.

Effect on other areas of law. Correcting the mistake of *Williams* will clarify the expectations of Constitutional analysis and bring expectations in line with current values expressed by this Court. *Ramos* expressed a clear vision of how the

Constitution will be interpreted: words and phrases will have the meaning they did to the people that made them part of the Constitution. That clear and obvious way of interpreting the Constitution on any issue is undercut when all someone needs to do to argue against it is point to the *Williams* case to suggest an alternate interpretation. This is exactly what courts in Florida have done in holding that this Court continues to respect the holding in *Williams* because this Court does not normally overturn authority sub silentio. *Guzman* at 72; *Morales-Alaffita* at 793.

Reliance interests. There are no reliance interests at stake in restoring the rule to that of *Thompson* and having it match the rule in *Ramos*. There can be no legitimate interest by the government in denying individuals a fundamental right as found in the Constitution. This Court found that *Ramos* did not apply retroactively to any cases that were no longer pending.[5] It should be expected the same analysis would apply to jury size and that overruling *Williams* would not be retroactive. Any state that relied on *Williams* in determining jury size will not have to relitigate cases in which an inadequate jury convicted a defendant and direct appeal has been completed.

These factors favor overturning *Williams* and restoring the rule of *Thompson*.

[5] *See Edwards v. Vannoy*, 593 US 255 (2021)

Death in Prison is Different

Mr. Bean is sentenced to life in prison without the possibility of parole. Mr. Bean invites the Court to decide this case on the narrow question of whether twelve person juries are required when such a sentence is at stake.

All states that utilize the death penalty require a jury of twelve to convict and to determine aggravating factors in capital cases. Because of the severity of the punishment, Mr. Bean argues that there has always been a Constitutional mandate to have a jury of twelve in a death penalty case. This Court has never needed to address that argument because all states require twelve jurors in cases in which the death penalty may be imposed.

Life without parole is "the second most severe penalty permitted by law." *Graham v. Florida*, 130 S.Ct. 2011 at 2027 (2010) quoting *Harmelin v. Michigan*, 501 U.S. 957 at 996 (1991). Florida stands alone in permitting six person juries to determine guilt when life in prison is a possible outcome. All other states recognize a six person jury is insufficient to even handle what this Court called the "third most severe" sentence, life with the possibility of parole. *Harmelin* at 996. The five other states that do not use twelve person juries for all criminal cases, Arizona, Connecticut, Indiana, Massachusetts, and Utah, all require more than six jurors on cases where life in prison is on the line. Utah is the only other state to allow less than twelve jurors to decide such a case. Utah requires eight jurors on all non-capital felony cases. *Utah Code* 78B-1-104. Arizona requires twelve jurors for any case that may be punishable by 30 years or more in prison. *Arizona Statutes*

21-102. Connecticut requires twelve jurors for any crime that may be punished by life in prison, regardless of if parole is a possibility. *Connecticut Statutes* 54-82. Indiana requires twelve jurors for all but their least serious level of felonies which carry a maximum of three and a half years in prison. *Indiana Code* 35-37-1-1 & 35-50-2-7. Massachusetts requires twelve jurors for all but their least serious level of felonies, those which carry a maximum of five years in prison. *Massachusetts Part III Title I Chapter 218 Section 26 & 26A & Massachusetts Rule of Criminal Procedure 20*. Forty-eight states recognize what Mr. Bean now asks this Court to make clear, a case in which the government seeks a mandatory life sentence without parole requires a jury of twelve to convict.

Summary

Williams was wrong in 1970, was recognized as wrong in 2020, and is wrong today. The fundamental right to a trial by jury in the Sixth Amendment means today what it meant in 1791: a decision rendered by a unanimous jury of twelve. Mr. Bean respectfully requests that his case be reversed and remanded for a trial with twelve jurors as is his fundamental right.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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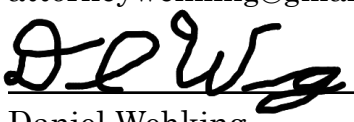

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September 11, 2024