

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*

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Daniel Wehking, Esq.
Counsel of Record
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Ridgefield, CT 06877
(321) 765-3115
attorneywehking@gmail.com

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CLIFTON BEAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2023-0450

May 17, 2024

Appeal from the Circuit Court for Sarasota County; Lee E. Haworth,
Judge.

Howard L. Dimmig, II, Public Defender, and Daniel Wehking, Special
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and William C. Shelhart,
Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

KELLY, KHOUZAM, and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.

MANDATE

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

This cause having been brought to this Court for review, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause, if required, in accordance with the decision of this Court, incorporated as part of this order, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Chief Judge Daniel H. Sleet of the District Court of Appeal of the State of Florida, Second District, and the seal of said Court at Tampa, Florida, on this day.

DATE:	July 16, 2024
CASE NO.	2D2023-0450
COUNTY OF ORIGIN:	Sarasota County
L.T. CASE NO.	21-CF-769-NC
CASE STYLE:	CLIFTON BEAN,
	Appellant(s)
	v.
	STATE OF FLORIDA,
	Appellee(s).

Mary Elizabeth Kuenzel
2D2023-0450 7/16/24
Mary Elizabeth Kuenzel, Clerk
2D2023-0450 7/16/24



cc:
CLIFTON BEAN
SARASOTA CLERK
HOWARD L. DIMMIG, II, P. D.
ATTORNEY GENERAL, TAMPA

P.D.10 S.A.P.D.
WILLIAM SHELHART, A.A.G.
DANIEL WEHKING, ESQ.

MEP

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT**

1700 N. Tampa Street, Suite 300, Tampa FL 33602

June 25, 2024

CLIFTON BEAN,
APPELLANT(S)

CASE NO.: 2D2023-0450
L.T. No.: 21-CF-769-NC

V.

STATE OF FLORIDA,
APPELLEE(S).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and motion to certify a question of great public importance is denied.

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

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel, Clerk
2D2023-0450 6/25/24



MEP

Served:
CLIFTON BEAN
SARASOTA CLERK
HOWARD L. DIMMIG, I I, P. D.
ATTORNEY GENERAL, TAMPA
P.D.10 S.A.P.D.
WILLIAM SHELHART, A.A.G.
DANIEL WEHKING, ESQ.

IN THE COUNTY/CIRCUIT COURT IN AND FOR SARASOTA COUNTY, FLORIDA

☐ COURT APPEARANCE RECORD
☐ JUDGMENT AND SENTENCE

STATE OF FLORIDA

CASE #:

2021 CF 000769 NC OBTS #: 5801284649

VS

BEAN, CLIFTON R

JUDGE: PADAR, DONNA

TYPE OF PROCEEDING: CSENT
DATE: 02/23/2023 11:00 amAPPEARANCE: ☐ PRESENT ☒ PRESENT WITH ATTORNEY ☐ NOT PRESENT-WRITTEN NOT GUILTY PLEA ☐ FAILED TO APPEARCOURT ORDERED: ☐ BW ☐ CAPIAS ☐ BOND SET ☐ NO MOD ☐ BOND FORFEITED ☐ SUMMONS ☐ D-6COURT APPOINTED: ☐ P.D. ☐ SPECIAL P.D. ☐ INTERPRETER ☐ DEFENDANT WAIVED RIGHT TO COUNSEL ☐ JURY SWORN

CHARGES OF:		BOND	TYPE	PLEA				ADJUDICATION					
CT	SQ			G	NG	NOLO	AB	G	NG	W/H	N.P.	D	DSM
1	5	794.011(2A)	SEXUAL BATTERY BY PERSON 18 YOA OR OL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	6	794.011(2A)	SEXUAL BATTERY BY PERSON 18 YOA OR OL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	3	800.04(5B)**	LEWD LASCV BEHAVIOR MOLEST VIC LESS 12	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	4	800.04(5B)**	LEWD LASCV BEHAVIOR MOLEST VIC LESS 12	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SENTENCE STATE ATTORNEY: Felix / Greene DEFENSE ATTORNEY: PETER JAMES LOMBARDO

CT	SQ	FINE	C.J.	DOC	YEARS	MONTHS	DAYS	C.T.S.	SUSP. JAIL	<input checked="" type="checkbox"/> CONC W/	<input type="checkbox"/> CONSEC TO	<input type="checkbox"/> COTERM W/
1	5			X	Life			X		all		
2	6			X	Life			X		counts		
3	3			X	Life			X				
4	4			X	Life			X				

☐ JAIL SENTENCE CONDITIONS:☐ OFFENDER WORK PROGRAM:

PROBATION / COMMUNITY CONTROL

CT	SQ	CO	DOC	YEARS	MONTHS	DAYS	CONCURRENT/W	CONSECUTIVE TO	RESTITUTION
1	5						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	6						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	3						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	4						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ COURT COSTS ATTACHED ☐ PAYMENT PLAN ☒ JUDGMENT ☐ DUE OVER PROBATION ☐ WAIVED☐ EARLY TERMINATION ☐ REVOKE ☐ TERMINATE ☐ ALL ORIGINAL CONDITIONS REMAIN

COURT COMMENTS:

Defense motion to Continue - Denied
 Cant be previously Acquitted on 2/08/23

minimum mandatory 25 years counts 3, 4, 5

CASE PLACED ON: ☐ NON-FILED STATUS ☐ MOTION(S) ☐ HEARD ☐ CANCELLED ☐ UNDER ADVISEMENT

SPECIAL CONDITIONS: BEGIN TERMS W/N COMPLETE TERMS W/N

- ☐ ATTEND & COMPLETE DUI SCHOOL ☐ RECOMMENDED TREATMENT (DUI) ☐ RANDOM URINALYSIS ☐ NO CONSUMPTION OF ILLEGAL DRUGS OR ALCOHOL
☐ ATTEND & COMPLETE VICTIM IMPACT PANEL ☐ B.P.O. LICENSE - MAY APPLY ☐ DRIVER'S LICENSE REC. BY CLERK
☐ IMPOUND VEHICLE ☐ 10 ☐ 30 ☐ 90 DAYS ☐ WAIVED ☐ DRIVER'S LICENSE SUSP / REV
☐ IGNITION INTERLOCK DEVICE ☐ FINGERPRINTS TAKEN ☐ DNA
☐ PUBLIC SERVICE _____ HOURS ☐ MAY BUY HOURS AT _____ ☐ MAY CONVERT COURT COSTS TO PUBLIC SERVICE AT _____
☐ NO CONTACT W/VICTIM(S) INDIRECT/DIRECT ☐ NO HARMFUL CONTACT
☐ NO RETURN TO PROPERTY
☐ DRUG ☐ ALCOHOL ☐ MENTAL HEALTH EVALUATION ☐ RECOMMENDED TREATMENT AS ORDERED
☐ SUCCESSFULLY COMPLETE TREATMENT / AFTERCARE AS ORDERED ON FIRST ATTEMPT ☐ DEFER TO ☐ PTI ☐ TPTI ☐ CBIP ☐ DVIP

DONE AND ORDERED IN OPEN COURT SARASOTA COUNTY, FLORIDA

THIS DAY OF , 20

JUDGE

NEXT COURT APPEARANCE ☐ SARASOTA ☐ VENICE ☐ STATE'S CONTINUANCE ☐ DEFENSE CONTINUANCE ☐ COURT CONTINUANCE

☐ ARRG AT /M ☐ PTC AT /M ☐ C.I.P. AT /M
☐ VOP AT /M ☐ CM ☐ DS AT /M ☐ PLEA ON AT /M
☐ HEARING / D.U.I. AT /M ☐ NJT ☐ JT AT /M ☐ H.C.C. AT /M

Page 1 of 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THE FOREGOING HAS BEEN ☒ HAND-DELIVERED / ☐ MAILED TO THE DEFENDANT THIS
 23 DAY OF Feb, 2023 BY Karen E. Rushing CLERK OF THE CIRCUIT COURT, SARASOTA COUNTY, FLORIDA
_____ DEPUTY CLERK

IN THE COUNTY/CIRCUIT COURT IN AND FOR SARASOTA COUNTY, FLORIDA

☐ COURT APPEARANCE RECORD
☐ JUDGMENT AND SENTENCE

STATE OF FLORIDA

CASE #:

2021 CF 000769 NC OBTS #: 5801283921

VS

BEAN, CLIFTON R

JUDGE: PADAR, DONNA

TYPE OF PROCEEDING: CSENT
DATE: 02/23/2023 11:00 amAPPEARANCE: ☐ PRESENT ☐ PRESENT WITH ATTORNEY ☐ NOT PRESENT-WRITTEN NOT GUILTY PLEA ☐ FAILED TO APPEARCOURT ORDERED: ☐ BW ☐ CAPIAS ☐ BOND SET ☐ NO MOD ☐ BOND FORFEITED ☐ SUMMONS ☐ D-6COURT APPOINTED: ☐ P.D. ☐ SPECIAL P.D. ☐ INTERPRETER ☐ DEFENDANT WAIVED RIGHT TO COUNSEL ☐ JURY SWORN

CHARGES OF:		BOND	TYPE	PLEA				ADJUDICATION					
CT	SQ			G	NG	NOLO	AB	G	NG	W/H	N.P.	D	DSM
5	1	794.011(8B)	SEXUAL BATTERY UPON PERSON 12 OR OLDE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	2	794.011(8B)	SEXUAL BATTERY UPON PERSON 12 OR OLDE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	7	800.04(5C2)	LEWD LASCV BEHAVIOR-VIC 12Y OR OLDR YO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SENTENCE STATE ATTORNEY: DEFENSE ATTORNEY: PETER JAMES LOMBARDO

CT	SQ	FINE	C.J.	DOC	YEARS	MONTHS	DAYS	C.T.S.	SUSP. JAIL	CONC W/	CONSEC TO	COTERM W/
5	1			X	life			X		as		
6	2									conts		
7	7			X	15			X				

☐ JAIL SENTENCE CONDITIONS:☐ OFFENDER WORK PROGRAM:

PROBATION / COMMUNITY CONTROL

CT	SQ	CO	DOC	YEARS	MONTHS	DAYS	CONCURRENT/W	CONSECUTIVE TO	RESTITUTION
5	1								
6	2								
7	7								

☐ COURT COSTS ATTACHED ☐ PAYMENT PLAN ☐ JUDGMENT ☐ DUE OVER PROBATION ☐ WAIVED☐ EARLY TERMINATION ☐ REVOKE ☐ TERMINATE ☐ ALL ORIGINAL CONDITIONS REMAIN

COURT COMMENTS:

CASE PLACED ON: ☐ NON-FILED STATUS ☐ MOTION(S) ☐ HEARD ☐ CANCELLED ☐ UNDER ADVISEMENT

SPECIAL CONDITIONS: BEGIN TERMS W/N COMPLETE TERMS W/N

- ☐ ATTEND & COMPLETE DUI SCHOOL ☐ RECOMMENDED TREATMENT (DUI) ☐ RANDOM URINALYSIS ☐ NO CONSUMPTION OF ILLEGAL DRUGS OR ALCOHOL
☐ ATTEND & COMPLETE VICTIM IMPACT PANEL ☐ B.P.O. LICENSE - MAY APPLY ☐ DRIVER'S LICENSE REC. BY CLERK
☐ IMPOUND VEHICLE ☐ 10 ☐ 30 ☐ 90 DAYS ☐ WAIVED ☐ DRIVER'S LICENSE SUSP / REV
☐ IGNITION INTERLOCK DEVICE ☐ FINGERPRINTS TAKEN ☐ DNA
☐ PUBLIC SERVICE _____ HOURS ☐ MAY BUY HOURS AT _____ ☐ MAY CONVERT COURT COSTS TO PUBLIC SERVICE AT _____
☐ NO CONTACT W/VICTIM(S) INDIRECT/DIRECT ☐ NO HARMFUL CONTACT
☐ NO RETURN TO PROPERTY
☐ DRUG ☐ ALCOHOL ☐ MENTAL HEALTH EVALUATION ☐ RECOMMENDED TREATMENT AS ORDERED
☐ SUCCESSFULLY COMPLETE TREATMENT / AFTERCARE AS ORDERED ON FIRST ATTEMPT ☐ DEFER TO ☐ PTI ☐ TPTI ☐ CBIP ☐ DVIP

DONE AND ORDERED IN OPEN COURT SARASOTA COUNTY, FLORIDA

THIS DAY OF , 20

JUDGE

NEXT COURT APPEARANCE ☐ SARASOTA ☐ VENICE ☐ STATE'S CONTINUANCE ☐ DEFENSE CONTINUANCE ☐ COURT CONTINUANCE

☐ ARR. AT /M ☐ PTC AT /M ☐ C.I.P. AT /M
☐ VOP AT /M ☐ CM ☐ DS AT /M ☐ PLEA ON AT /M
☐ HEARING / D.U.I. AT /M ☐ NJT ☐ JT AT /M ☐ H.C.C. AT /M

Page 1 of 1

CERTIFICATE OF SERVICE —
 I HEREBY CERTIFY THAT THE FOREGOING HAS BEEN HAND-DELIVERED / MAILED TO THE DEFENDANT THIS
 DAY OF , 2023.
 BY: *John Frank* CLERK OF THE CIRCUIT COURT, SARASOTA COUNTY, FLORIDA
 DEPUTY CLERK

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN
AND FOR SARASOTA COUNTY, FLORIDA

CASE NUMBER: 2021 CF 000769 NC

OBTS NUMBER: 5801284649

STATE OF FLORIDA

vs

CLIFTON R BEAN

SENTENCE AND SPECIAL PROVISIONS

SENTENCE

As To Counts 1 – 5

The Defendant, being personally before this Court, accompanied by the Defendant's attorney of record, PETER JAMES LOMBARDO, 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 the Defendant should not be sentenced as provided by law, and no cause being shown,

(check one if
of applicable)

- ☒ and the Court having on 02/08/2023 deferred imposition sentence until this date
- ☐ and the Court having previously entered a judgment in this case on _____ now resentsences the Defendant.
- ☐ And the Court having placed the Defendant on ☐ probation ☐ community control and having subsequently revoked and terminated the Defendant's ☐ probation ☐ community control

IT IS THE SENTENCE OF THE COURT THAT:

- ☐ The Defendant pay a fine of \$ _____ pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 938.04, Florida Statutes.
- ☒ The Defendant is hereby committed to the custody of the **Department of Corrections**.
- ☐ The Defendant is hereby committed to the custody of the Sheriff of Sarasota County, Florida.
- ☐ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (check one; unmarked sections are inapplicable):

- ☐ For a term of natural life
- ☒ For a term of **LIFE**
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in the Order

If "split" sentence, complete the appropriate paragraph.

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

In the event the Defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

SENTENCE

As To Count 7

The Defendant, being personally before this Court, accompanied by the Defendant's attorney of record, PETER JAMES LOMBARDO, 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 the Defendant should not be sentenced as provided by law, and no cause being shown,

(check one if
of applicable)

- ☒ and the Court having on 02/08/2023 deferred imposition sentence until this date
- ☐ and the Court having previously entered a judgment in this case on _____ now resentsences the Defendant.
- ☐ And the Court having placed the Defendant on ☐ probation ☐ community control and having subsequently revoked and terminated the Defendant's ☐ probation ☐ community control

IT IS THE SENTENCE OF THE COURT THAT:

- ☐ The Defendant pay a fine of \$ _____ pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 938.04, Florida Statutes.
- ☒ The Defendant is hereby committed to the custody of the **Department of Corrections**.
- ☐ The Defendant is hereby committed to the custody of the Sheriff of Sarasota County, Florida.
- ☐ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (check one; unmarked sections are inapplicable):

- ☐ For a term of natural life
- ☒ For a term of **15 YEARS**
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in the Order

If "split" sentence, complete the appropriate paragraph.

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

In the event the Defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

SPECIAL PROVISIONS

As to Counts 1 – 5, 7

Include all findings, sentencing enhancements, and mandatory minimum provisions, as authorized by law and pronounced at sentencing.

- Retention of Jurisdiction** ☐ The Court retains jurisdiction over the Defendant pursuant to section 947.16(4)(a), Florida Statutes (1983).
- Jail Credit** ☒ It is further ordered that the Defendant shall be allowed a total of 284 days as credit for time incarcerated before imposition of this sentence.
- Credit for Time Served in Resentencing After Violation of Probation or Community Control** ☐ It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____. (Offenses committed before October 1, 1989.)
- ☐ It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____. (Offenses committed between October 1, 1989 and December 31, 1993.)
- ☐ The Court deems the unforfeited gain time previously awarded above on the case/count forfeited under section 948.06(7), Florida Statutes.
- ☐ The Court allows unforfeited gain time previously awarded above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1), Florida Statutes.)
- ☐ It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of

resentencing. The Department of Corrections shall apply original jail credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count . (Offenses committed on or after January 1, 1994)

**Consecutive/Concurrent
as to other Counts**



It is further ordered that the sentence imposed for this count shall run ☐ consecutive to ☒ concurrent with the sentence set forth in **EACH COUNT** of this case.

**Consecutive/Concurrent
As to Other Convictions**



It is further ordered that the composite term of all sentences imposed for the counts specified in the Order shall run ☐ consecutive to ☐ concurrent with the following: (check one)



any active sentence being served



specific sentences

In the event the above sentence is to the Department of Corrections, the Sheriff of Sarasota County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of the Judgment and Sentence and any other documents specified by Florida Statute.

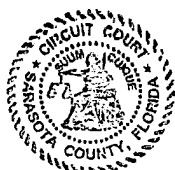
The Defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within thirty (30) days from this date with the Clerk of the Court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigence.

In imposing the above sentence, the Court further recommends: **COUNT 6 PREVIOUSLY AQUITTED ON 2/8/23.**
MINIMUM MANDATORY 25 YEARS COUNTS 3, 4, 5.

DONE AND ORDERED in open Court at Sarasota County, Florida this 23RD day of February, 2023



CIRCUIT JUDGE LEE E. HAWORTH



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail/hand delivery to the
☒ State Attorney ☐ County Probation ☐ Defendant
☒ Defense Attorney P. Lombardo

Witness my hand and official seal this 21 day
of Feb, 20 23.

KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT

By:  Deputy Clerk

examination of Detective Cox, “The record is sufficiently clear that Jade denied any sexual battery on that or any other occasion, and it is unnecessary to do it a second time.” This is not the balancing test weighing the probative nature of the evidence against the substantial unnecessariness of its presentation which is required. There is no determination that Ms. Bell’s testimony is in fact cumulative per the law described above. Further, there could be no reasonable analysis that finds that hearing testimony from the eye witness to the evidence is substantially unnecessary after a separate witness described what she saw on video.

For all the reasons listed above this case must be remanded and a new trial conducted that allows Mr. Bean to question Ms. Bell regarding Jade Butler’s denial of the crimes alleged ever happening.

II. MR. BEAN’S CONSTITUTIONAL RIGHT TO TRIAL BY JURY WAS ABRIDGED WHEN A JURY OF LESS THAN TWELVE DETERMINED THE VERDICT.

When the six members of the jury in this case came to a verdict of guilty on counts 1 and 2, unbeknownst to them they condemned Mr. Bean to a lifetime in prison without the opportunity for parole. Florida law requires a mandatory sentence of prison until death for anyone found guilty of those counts. The United

States Constitution as interpreted by the United States Supreme 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 Article III of the U.S. Constitution and 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. The 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. The 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 the Court in *Ramos* was examining Article III and 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.

The 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. The Court quotes Blackstone when he writes "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). The 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 at the time shows 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 when their supreme court addressed it in 1993. *Blum v. Dowell Merrill Dow Pharmaceuticals*, 534 Pa. 97 at 119 (Pa. 1993).

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

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.

Court ruled that such a change would violate the state's constitution. 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 "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 "That the inhabitants of Maryland are entitled to the common law of England, and the trial by Jury, according 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 Supreme 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.

Nonbinding Persuasive Decisions

Neither this Court nor the Florida Supreme Court has addressed the issue of the Constitutionality of six person juries since the *Ramos* decision. Therefore there is no stare decisis from this court nor mandate from the Florida Supreme Court to be followed. Since the *Ramos* decision, one Florida District Court of Appeal has addressed the issue and decided it in the negative. *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022).² *Guzman* relied on *Williams v. Florida*, 399 U.S. 78 (1970) which found Florida’s six person juries to be Constitutional and held that a District Court of Appeal cannot recognize that the United State Supreme Court has overturned a fundamental feature of Sixth Amendment jurisprudence without it being said explicitly by the United State Supreme Court.

The Honorable Milton Hirsch of Florida’s Eleventh Circuit came to a different result when analyzing the issue in 2022 when he issued an order on the request for a twelve person jury in the

² The First DCA addressed the issue in one sentence of a footnote in *Brown v. State*, 359 So. 3d 408 (Fla. 1st DCA 2023), in which the argument was rejected.

case of *State of Florida v. Ulyses West*, F20-9878.³ Judge Hirsch stated “I well recognize my obligation to follow the law as set forth by wiser judges on higher courts. But where, as here, the Supreme Court has made it clear and more than clear that it will return from a road erroneously taken, see *Ramos v. Louisiana*, *supra*, it is difficult for a judge of a lower court to feel obliged to follow that road in pursuit of further error.” Judge Hirsch would have granted the request for twelve jurors in light of the *Ramos* ruling, but correctly recognized that with *Guzman* being decided mere weeks before his order, he was required to follow the district court.

Justice Gorsuch made it abundantly clear that he believes the Constitution requires a twelve person jury in *Khorrami v. Arizona*, 143 S. Ct. 22 (2022). This case presents Justice Gorsuch’s dissent from seven of the other Court members choosing not to give *Khorrami* a hearing. The Supreme Court exercised its discretion and made *Khorrami* one of more than 7,000 cases it chose not to hear every year so Justice Gorsuch’s opinion is purely persuasive in this case.

<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about>. As the

³ For simplicity’s sake, Judge Hirsch’s order may be downloaded at this link: <https://tinyurl.com/bdwh6e3w>.

author of *Ramos*, Justice Gorsuch’s opinion on the matter is arguably the most persuasive.

Justice Gorsuch found *Williams* to be wrongly decided when the opinion was issued and continued to be bad law today. He notes that for most of the country’s history it protected a twelve person jury and states “this Court abandoned that ancient promise and enshrined in its place bad social science parading as law.”

The defendant in *Khorrami* was in a better position than Mr. Bean in terms of the seriousness of penalties he was facing. Khorrami was only charged with one count of fraudulent schemes and artifices and one count of theft and ultimately sentenced to two months in jail followed by two years of probation. Further, Khorrami had eight jurors determine the verdict. *State v. Khorrami*, No. 1 CA-CR 20-0088 (Ariz. Appeals First Division 2021). Mr. Bean’s mandatory life sentences without parole from a jury of only six implicates even greater Constitutional concerns. Given he had less jurors and a significantly more severe sentence, Mr. Bean raises greater Constitutional implications.

Ramos Overrules Williams

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* at 23.

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. The U.S. Supreme 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 Supreme 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), the 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. 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, however, even under *Williams’s* standards that decision is flawed as the science it relied upon is no longer accepted.

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 are now bad law.

Jury Objection

Mr. Bean objected to the jury in this case and the trial court swore in the jury over his objection. (T. 114-115, 244-245 & 254.) This should be sufficient to preserve the issue of an inadequate jury in this case. The reason given for the objection, in this case the complete absence of Black jurors, is irrelevant.

If there had been no objection, this issue would still be properly before this Court. The Court in *Thompson* found it is “not

in the power of one accused of felony, by consent expressly given or by his silence, to authorize a jury of only eight persons to pass upon the question of his guilt.” *Id.* at 354. A failure to provide a Constitutionally mandated number of jurors would be a fundamental error. Fundamental error is "error which goes to the foundation of the case or goes to the merits of the cause of action" and is grounds for reversal without a contemporaneous objection. *Hopkins v. State*, 632 So.2d 1372 at 1374 (Fla.1994). Mr. Bean had no authority to accede to a Constitutionally inadequate jury, failing to provide a proper jury is a fundamental error that does not require an objection to be preserved, and Mr. Bean did in fact object to this jury. This issue is properly before this Court. For the reasons stated above, Mr. Bean requests this case to be reversed and remanded for a trial before a jury of twelve.

III. THE STATE’S SOLICITATION OF EVIDENCE OF UNCHARGED CRIMES AND DISCUSSION OF UNCHARGED CRIMES NECESSITATES A NEW TRIAL.

During the trial, the State solicited testimony from Jade Butler that Mr. Bean molested her while she was in Kansas. There was no charge pending in this case of any act occurring in Kansas. The State told the trial court at a sidebar during Jade Butler’s direct

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

Clifton Bean,
Appellant

Case No.: 2D23-769

vs

State of Florida,
Appellee.

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

Appellant Clifton Bean, through counsel, moves for rehearing and to certify a question of great public importance under Florida Rule of Appellate Procedure 9.330. He does so for this reason:

This Court affirmed appellant's conviction and his sentence on May 17, 2024. The Court's per curiam affirmed opinion denies his argument made in Point 2 that he is entitled to a 12-person jury under the Sixth and Fourteenth Amendments to the United States Constitution.

Appellant intends to seek further review of this issue. The State has argued to the United States Supreme Court that the petitioners' failure to move to certify a question of great public importance on that issue meant that they did not pursue every

available avenue of review in the Florida courts 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; and *Enriquez v. State*, 23-5965. Accordingly, appellant moves for rehearing and to certify a question of great public importance.

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 this motion and certify this question as one of great public importance:

DOES THE SIXTH AMENDMENT REQUIRE A TWELVE
PERSON JURY IN ALL CAPITAL CASES?

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

Respectfully submitted,

/s/ Daniel Wehking

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished electronically through the Florida Court's Eportal to the Office of the Attorney General at crimappTPA@myfloridalegal.com on this 31st day of May, 2024.

/s/ Daniel Wehking
DANIEL WEHKING, B.C.S.
Special Assistant Public Defender