No.

IN THE SUPREME COURT OF THE UNITED STATES

DAVID RASHAUN HAMIL, JR., 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

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DAVID RASHAUN HAMIL, JR.,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2022-3328

[May 23, 2024]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William L. Roby, Judge; L.T. Case No. 432020CF001223A.

Carey Haughwout, Public Defender, and Gary Lee Caldwell, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Sorraya M. Solages-Jones, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

CIKLIN, GERBER and ARTAU, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

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

July 2, 2024

DAVID RASHAUN HAMIL, JR., Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2022-3328** L.T. No. - 432020CF001223A

BY ORDER OF THE COURT:

ORDERED that Appellant's June 5, 2024 motion for rehearing and certification is denied.

Served:
Attorney General-W.P.B.
Gary Lee Caldwell
Christine C. Geraghty
Palm Beach Public Defender
Sorraya M Solages-Jones

KR

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

Lonn Weissblum
4D2022-3328 July 2, 2024
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2022-3328 July 2, 2024

ARGUMENT

APPELLANT'S CONVICTIONS AND SENTENCES SHOULD BE REVERSED BECAUSE HE WAS CONVICTED BY A SIX-PERSON JURY IN VIOLATION OF THE DUE PROCESS AND JURY CLAUSES OF THE FEDERAL CONSTITUTION.

Florida allows trial by a jury of six in non-capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat. Accordingly, this case involved a trial by a jury of six rather than twelve members. Appellant contends that the Due Process, Privileges and Immunities, and Jury Clauses of the federal constitution requires a jury of twelve, so that fundamental error occurred because he was deprived of this right. Amend. VI, XIV, U.S. Const. He acknowledges contrary authority, as discussed below.

Williams v. Florida, 399 U.S. 78 (1970), held that state court juries as small as six were constitutionally permissible, despite the determination in *Thompson v. Utah,* 170 U.S. 343, 349-50 (1898), that the jury guaranteed by the Sixth Amendment consists "of twelve persons, neither more nor less."

Thompson held that the Sixth Amendment enshrined the right to a jury of twelve as provided at common law. *Id.* at 349-50. In addition to the authorities cited there, one may note that

Blackstone stated that the right to a jury of twelve is even older, and more firmly established than the unqualified right to counsel in criminal cases. 4 William Blackstone, *Commentaries on the Laws of England*, ch. 27 ("Of Trial and Conviction").[1] Blackstone traced the right back to ancient feudal right to "a tribunal composed of twelve good men and true," and wrote that "it is the most transcendent privilege which any subject can be enjoy or wish for, that he cannot be affected in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals." 3 Blackstone, ch. 23 ("Of the Trial by Jury").[2]

Thus, at the time of the amendment's adoption, the essential elements of a jury included "twelve men, neither more nor less." *Patton v. United States*, 281 U.S. 276, 288 (1930).

Williams itself has now come into question in light of *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which concluded that the Sixth Amendment's jury requirement encompasses what the term "meant at the Sixth Amendment's adoption." *Id.* at 1395. (Of course, the

[1] Found at https://lonang.com/wp-content/download/Blackstone-CommentariesBk4.pdf

[2] Found at https://lonang.com/wp-content/download/Blackstone-CommentariesBk3.pdf

requirement that the jury be composed of men has been modified by a subsequent amendment – the Equal Protection Clause of the Fourteenth Amendment. *See J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994)).

In this case, Appellant did not receive a trial by a jury as the term was meant at the Sixth Amendment's adoption, or at the time of the Fourteenth Amendment's adoption for that matter, as he was not tried by a jury of twelve. The undersigned acknowledges that this Court has rejected this argument. *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *rev. denied* SC2022-1597 (Fla. June 6, 2023), *petition for cert. pending* No. 23-5173 (U.S.).

The error is fundamental and structural, as the conviction arose from a sheer denial of this fundamental right.

Waiver of the constitutional right of trial by the proper number of jurors must be made personally by the defendant. *See Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997) (finding valid defendant's agreement to verdict by five-member jury valid when made "in a colloquy at issue here, including a personal on-the-record waiver," and sufficient to pass muster under the federal and state constitutions," and his decision was made "toward the end of his

trial, after having ample time to analyze the jury and assess the prosecution's case against him. He affirmatively chose to proceed with a reduced jury as opposed to a continuance or starting with another jury.”). Such was not the case here. A new trial should be ordered.