No. 24-6172

In the

Supreme Court of the United States

TYRONE T. JOHNSON,

Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

BRIEF IN OPPOSITION

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

C. SUZANNE BECHARD
Associate Deputy Attorney General
**Counsel of Record*

CHRISTINA Z. PACHECO
Senior Assistant Attorney General

Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
CarlaSuzanne.Bechard@myfloridalegal.com
(813) 287-7900

COUNSEL FOR RESPONDENT

Capital Case

QUESTION PRESENTED

Whether this Court should grant certiorari to review the Florida Supreme Court's decision in Petitioner's case not to revisit its prior opinion in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), finding that comparative proportionality review is not mandated by the Eighth Amendment, when the decision neither conflicts with nor misapplies *Pulley v. Harris*, 465 U.S. 37 (1984).

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OPINION BELOW

The opinion of the Florida Supreme Court (App. 1a–39a) is reported at *Johnson v. State*, No. SC2023-0055, ___ So. 3d ___, 2024 WL 33364657 (Fla. July 11, 2024).

STATEMENT OF JURISDICTION

The Florida Supreme Court issued its opinion in this case on July 11, 2024. Petitioner filed a motion for rehearing, which was denied on September 19, 2024. The Florida Supreme Court issued its mandate on October 9, 2024.

Petitioner invokes the jurisdiction of this Court based upon 28 U.S.C. § 1257(a). Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

STATEMENT OF THE CASE AND FACTS

Petitioner, Tyrone T. Johnson, is a death-row inmate convicted of premeditated first-degree murder and sentenced to death for the killing of ten-year-old Ricky Willis. In addition, Johnson was convicted of aggravated child abuse of Ricky Willis and second-degree murder of Ricky's mother and Johnson's girlfriend, Stephanie Willis.

The evidence at trial established that Johnson shot and killed both Ricky and Stephanie Willis after Johnson got into an argument with Stephanie. *Johnson v. State*, No. 2023-0055, ___ So. 3d ___, 2024 WL 33364657 (Fla. July 11, 2024). Johnson called 911 and said that he shot Stephanie and Ricky, and

Johnson stayed on the phone until deputies arrived at the scene. *Id.* Johnson complied with law enforcement and later gave a statement admitting to repeatedly firing his gun in the apartment while Stephanie and Ricky Willis were there. *Id.*

Nine shell casings were collected from the scene, and testing determined that all were fired from Johnson's gun. (DAR T. 1975, 2327-28)[1]. Crime scene evidence established that Ricky was shot while hiding under his bed. There was blood all over Ricky's room and a pile of pink vomit on the floor. (DAR T. 1810, 1999-2000, 2005-06). There was a significant amount of blood under Ricky's bed, and the blood matched Ricky's DNA with a greater than 700 billion times likelihood. (DAR T. 2354). Ricky's DNA was also a major contributor to the mixture containing Johnson's DNA that was on the handle grip of Johnson's gun. (DAR T. 2357, 2360).

After finding Johnson guilty of first-degree murder, the jury heard evidence of aggravation and mitigation and unanimously recommended a sentence of death. (DAR 115). The trial court heard additional evidence and ultimately agreed with the jury's recommendation and sentenced Johnson to death. The court determined that Ricky was alive and conscious when he received five of the six gunshot wounds, and the level of pain would have varied from "moderate" to "extreme." (DAR 534). The court held that the evidence showed

[1] The direct appeal record transcript is referred to as "DAR T.".

that Ricky was hiding under the bed when he received two of the gunshot wounds. The court noted that two of the wounds were "defensive wounds." (DAR 534). The gunshot that pierced Ricky's arm exited his arm and entered his jaw, breaking his jawbone and teeth, and cutting his tongue. While the wound would not have been fatal, it would have resulted in excessive bleeding that would have made it difficult for Ricky to breathe or swallow. (DAR 535).

Johnson raised seven issues on direct appeal to the Florida Supreme Court. One of which was a request for the court to reconsider its decision in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), doing away with proportionality review in Florida. The Florida Supreme Court denied all of Johnson's claims and affirmed Johnson's conviction for first-degree murder and his sentence of death. *Johnson v. State*, No. SC2023-0055, __ So. 3d ___, 2024 WL 3364657, *13 (Fla. July 11, 2024).

Petitioner now seeks this Court's review.

REASONS FOR DENYING THE PETITION

I. Petitioner has not met this Court's Criteria for Granting Certiorari Review.

Petitioner seeks this Court's review based on his assertion that the Florida Supreme Court misread this Court's decision in *Pulley v. Harris*, 465 U.S. 37 (1984) to mean that the Eighth Amendment never requires comparative proportionality review. Petition at 7. As will be shown, the Florida Supreme Court in no way misread *Pulley v. Harris*, but even so, Petitioner has alleged no

valid basis to warrant this Court's review.

This Court's Rule 10 states that that certiorari will be granted "only for compelling reasons," which include the existence of conflicting decisions on issues of law among federal courts of appeals, among state courts of last resort, or between federal courts of appeals and state courts of last resort. The Rule warns that a petition for writ of certiorari "is rarely granted when the asserted error consists of ... the misapplication of a properly stated rule of law." *See Carney v. Adams*, 592 U.S. 53, 64 (2020).

Error correction is outside the mainstream of the Court's functions and is not a compelling reason to grant certiorari. *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring). As this Court has acknowledged, "there are strong reasons to adhere scrupulously to the customary limitations of [the Court's] discretion." *Illinois v. Gates*, 462 U.S. 213, 232 (1983). And granting certiorari to correct an alleged misapplication of law "will very substantially alter the Court's practice." *Tolan*, 572 U.S. at 661.

What is more, Johnson has not alleged that the Florida Supreme Court misapplied *Pulley v. Harris*. Rather, he merely claims that the court "misread" the decision to mean that comparative proportionality review is never required under any circumstance. An allegation that the Florida Supreme Court interpreted a holding more strictly than required does not amount to a claim that the court "misapplied" the law. Thus, there is even less cause to warrant review in this case.

This Court's well-known criteria for granting certiorari review are not met here. Certiorari should be denied.

II. The Florida Supreme Court Did Not "Misread" *Pulley v. Harris.*

In *Lawrence v. State*, 308 So. 3d 544, 548 (Fla. 2020), the Florida Supreme Court acknowledged that Florida's Constitution has a conformity clause requiring courts to interpret the Eighth Amendment in conformity with the decisions of this Court interpreting the Eighth Amendment. The Florida Supreme Court further highlighted that this Court "has held that comparative proportionality review of death sentences is not required by the Eighth Amendment. "*Lawrence*, 308 So. 3d at 548 (quoting *Pulley v. Harris*, 465 U.S. 37, 50-51 (1984) ("There is ... no basis [in Supreme Court case law] for holding that comparative proportionality review by an appellate court is required in every case in which the death penalty is imposed and the defendant requests it.").

Notably, Florida has no statutory provision requiring proportionality review. Thus, the Florida Supreme Court found that the only "legitimate state-law source for comparative proportionality review" was the Florida Constitution's prohibition against cruel and unusual punishment—before the conformity clause was added to that provision in 2002. *Lawrence*, 308 So. 3d at 550. The court determined that "a judge-made comparative proportionality review" violates the conformity clause in light of the *Pulley v. Harris* decision establishing that comparative proportionality review is not required by the Eighth Amendment.

Id. "We cannot judicially rewrite our state statutes or constitution to require a comparative proportionality review that their text does not." *Id.* "Nor can we ignore our constitutional obligation to conform our precedent respecting the Florida Constitution's prohibition against cruel and unusual punishment to the Supreme Court's Eighth Amendment precedent by requiring a comparative proportionality review that the Supreme Court has held the Eighth Amendment does not." *Id.*

The Florida Supreme Court neither misread nor misapplied *Pulley v. Harris*. This Court framed the issue in *Pulley v. Harris* as "whether the Eighth Amendment... requires a state appellate court, before it affirms a death sentence, to compare the sentence in the case before it with the penalties imposed in similar cases if requested to do so by the prisoner." *Harris,* 465 U.S. at 43–44. Harris argued that the Eighth Amendment does require such review "and that this is the invariable rule in every case." *Id.* This Court did "not agree." *Id.*

This Court clarified that "[t]here is thus no basis in our cases for holding that comparative proportionality review by an appellate court is required in every case in which the death penalty is imposed and the defendant requests it." *Harris,* 465 U.S. at 50–51. The Eighth Amendment does not require proportionality review be conducted. *Id.* Indeed, *Pulley v. Harris* emphasized that in *Jurek v. Texas,* 428 U.S. 262 (1976), this Court upheld a death sentence even though neither statute nor state case-law provided for comparative proportionality review.

Given the holding in *Pulley v. Harris* that the Eighth Amendment does not mandate proportionality review, the Florida Supreme Court simply could not have misapplied *Pulley v. Harris* when it found that it was not required, under the Eighth Amendment, to conduct proportionality review.

Johnson has not set forth any compelling reason for this Court to exercise its discretionary review in granting the petition for writ of certiorari. Sup. Ct. R. 10. Respondent further notes that this Court denied certiorari review in *Lawrence. Lawrence v. Florida*, 142 S. Ct. 188 (2021). The Florida Supreme Court's denial of Johnson's request to revisit its decision in *Lawrence* certainly does not warrant certiorari review. Indeed, this Court has consistently denied certiorari review in cases since *Lawrence* challenging the Florida Supreme Court's decision not to conduct a proportionality review. *See, e.g., Miller v. Florida*, No. 23-7727, 2024 WL 4427056 (Oct. 7, 2024); *Bevel v. Florida*, 144 S. Ct. 2570 (2024); *Cruz v. Florida*, 144 S. Ct. 1016 (2024); and *Gordon v. Florida*, 143 S. Ct. 1092 (2023). The instant case is not worthy of this Court's attention.

III. The Resolution Of This Claim Was Correct.

The lower court's resolution of this claim was entirely correct. The Florida Supreme Court properly "decline[d] Johnson's invitation to conduct comparative proportionality review." *Johnson v. State*, No. SC2023-0055, __ So. 3d ___, 2024 WL 3364657 (Fla. July 11, 2024). In doing so, the court affirmed its decision in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), holding that comparative proportionality review is not mandated by the Eighth Amendment. *Id.*

This decision does not conflict with *Pulley v. Harris*, which found that proportionality review is not a constitutional requirement of the Eighth Amendment. Johnson has cited no authority establishing that the Florida Supreme Court was required to conduct a comparative proportionality review in his case. While a state may certainly elect to mandate such review, there must be a legal basis for doing so.

As previously mentioned, Florida has no statutory requirement authorizing proportionality review. Nor does the state constitution mandate such review. To the contrary, the constitution requires that the state's prohibition against cruel and unusual punishment be interpreted in conformity with this Court's jurisprudence. Since *Pulley v. Harris* unequivocally holds that the Eighth Amendment does not require proportionality review, Florida, has no legal provision authorizing courts to conduct such review. Accordingly, the Florida Supreme Court correctly declined Johnson's request for proportionality review.

Certiorari review is altogether unwarranted here.

IV. This Case is a Poor Vehicle for this Court's Review.

Even if this Court were inclined to revisit *Pulley v. Harris*, this case presents a particularly inappropriate vehicle to do so. This is a heavily aggravated case with a vulnerable child victim, the heinous, atrocious, or cruel ("HAC") aggravating factor, and the prior violent felony aggravating factor. The HAC aggravator is one of the most serious aggravators, and the prior violent felony aggravator is considered one of the weightiest aggravators in Florida's

statutory scheme. *See Gonzalez v. State,* 136 So. 3d 1125, 1167 (Fla. 2014).

The trial court's sentencing order outlines in detail the evidence and facts that support the HAC aggravating factor. The court specifically found that "the child-victim suffered an extremely physically painful and psychologically torturous death at the hands of Defendant." (DAR 535). In addition to murdering a ten-year-old child, Johnson killed the child's mother. The jury unanimously found Johnson guilty of the second-degree murder of Stephanie Willis, which established the weighty, prior-violent-felony aggravating factor. (DAR 533).

The trial court determined that the aggravating factors heavily outweighed Johnson's mitigation. Given that this case is among the most aggravated and least mitigated, Johnson's death sentence would have easily been found proportionate had proportionality review been conducted. Indeed, the Florida Supreme Court has routinely found the death sentence proportionate in similar cases. *See, e.g., Heyne v. State,* 88 So. 3d 113, 127 (Fla. 2012). Accordingly, proportionality review would not have altered the outcome of this case on direct appeal. Certiorari review should be denied.

CONCLUSION

Petitioner has not provided any compelling reason for this Court to grant certiorari review. Johnson's petition for writ of certiorari should be denied.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

C. SUZANNE BECHARD
Associate Deputy Attorney General
Florida Bar No. 147745
Counsel of Record

CHRISTINA Z. PACHECO
Senior Assistant Attorney General

Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
carlasuzanne.bechard@myfloridalegal.com
capapp@myfloridalegal.com
Telephone: (813) 287-7900

COUNSEL FOR RESPONDENT