CAPITAL CASE
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

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Blair Allen
Tenth Judicial Circuit Public Defender

Steven L. Bolotin
Assistant Public Defender
Counsel of Record for Petitioner

Office of the Public Defender
Tenth Judicial Circuit of Florida
P. O. Box 9000 – Drawer PD
Bartow, FL 33831
sbolotin@pd10.org
(863) 534-4200

Attorneys for Petitioner

TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES

PAGE NO.

REPLY BRIEF

I. PULLEY V. HARRIS

Contrary to the state of Florida's argument, *Pulley v. Harris*, 465 U.S. 37 (1984) does not categorically hold that the Eighth Amendment never requires proportionality review. Its holding was that California's 1977 capital sentencing scheme contained sufficient other safeguards against arbitrary infliction of the death penalty so that that scheme did not require proportionality review. *Pulley v. Harris* expressly left open the possibility that a state or federal capital sentencing scheme could be so lacking in safeguards that - - without proportionality review - - it would not pass constitutional muster. Florida, through a series of judicial and legislative decisions made within the last five years rolling back the safeguards which previously existed[1], has now sunk to that level.

II. PROPORTIONALITY REVIEW COULD EASILY HAVE RESULTED IN A LIFE SENTENCE FOR TYRONE JOHNSON, BUT FOR THE FLORIDA SUPREME COURT'S REFUSAL TO CONSIDER IT

The state claims that this case is a poor vehicle for this Court's review because - - without even bothering to mention in its statement of the facts or argument what the mitigating evidence was - - the state makes an ipse dixit assertion that "this case

[1] See the dissenting opinions of Justice Labarga in *Lawrence v. State*, 308 So.3d 544, 552-58 (Fla. 2020) and *State v. Poole*, 297 So.3d 487, 513-15 (Fla. 2020).

is among the most aggravated and least mitigated", and therefore "would have easily been found proportionate had proportionality review been conducted" [Brief in Opposition, p.9].

The state is wrong. Tyrone Johnson would very likely have been resentenced to life imprisonment - - under Florida law as it existed before 2020 when the Florida Supreme Court misconstrued *Pulley* in *Lawrence* - - but for that Court's refusal to consider his proportionality claim.

Prior to *Lawrence* the reviewing court conducted a two-part inquiry to "determine whether the crime falls within the category of both (1) the most aggravated, and (2) the least mitigated of murders." *Davis v. State*, 121 So.3d 462, 499 (Fla. 2013); *Crook v. State*, 908 So.2d 350, 357 (Fla. 2005); *Cooper v. State*, 739 So.2d 82, 85 (Fla. 1999); *Almeida v. State*, 748 So.3d 922, 933 (Fla. 1999)(emphasis in opinions); see also *Delgado v. State*, 162 So.3d 971, 982 (Fla. 2015). Thus, even in cases where the "most aggravated" prong is satisfied, "we are next required to determine whether [the] case also falls within the category of the least mitigated of murders for which the death penalty is reserved." *Crook*, 908 So.2d at 357 (emphasis in opinion); see also *Cooper*, 739 So.2d at 85-86.

Florida case law had consistently held that "substantial mental deficiencies merit great consideration in evaluating a defendant's culpability in a proportionality assessment." *Crook*, 908 So.2d at 358. See *Miller v. State*, 373 So.2d 882, 886 (Fla. 1979) (recognizing legislative intent "to mitigate the death penalty in favor of a life sentence for those persons whose responsibility for their violent actions has been

substantially diminished as a result of a mental illness, uncontrolled emotional state of mind, or drug abuse"); *Davis v. State*, supra, 121 So.3d at 501 ("We have held sentences of death to be disproportionate in a large number of other cases involving substantial mental health mitigation").

Here is the trial and penalty phase evidence which the state ignores, beginning with the fact that Tyrone Johnson (a longtime U.S. Marine Corps and Army veteran who had raised a close-knit family, obtained Bachelors and Masters degrees, held several responsible jobs including paralegal for the South Caroline Supreme Court, and had no prior criminal history) had recently lost his beloved oldest son Devin to suicide.

The state, in its Statement of the Case and Facts, says the killings occurred "after Johnson got in an argument with [his girlfriend] Stephanie." [Brief in Opposition, p. 1]. True as far as it goes. However, the unrebutted evidence at trial was that the explosion of violence was triggered when, as they argued over what to watch on TV, Stephanie said to Tyrone "I see why your son killed his self like a bitch, cause you a bitch." [Petitioner's Appendix 4a]. As set forth in the Florida Supreme Court's opinion:

> The defense called 10 witnesses in the penalty phase: Dr. Scot Machlus, a clinical psychologist; Al Johnson, Johnson's brother; Johnson's mother and father; Johnson's four children; Johnson's former employer at the Florida Office of the Attorney General; and a corrections expert.
>
> Dr. Machlus testified to the "impaired capacity" mitigator - - that is, that Johnson's capacity to appreciate the criminality of his conduct was substantially impaired. He attributed Johnson's impaired capacity

> to difficulties in Johnson's childhood and a lifelong battle with depression. Regarding Johnson's childhood, Dr. Machlus discussed the absence of his father, a history of family violence, and abuse Johnson suffered. He detailed the "corporal punishment" inflicted on Johnson and his brother Al by their grandmother: he said the children were "made to strip naked and beaten with extension cords, cords from lamps, fan belts and a black strap." Dr. Machlus also described Johnson's struggles with depression in the decade or so before the murders. Johnson had struggled to hold down a job and maintain relationships. In 2012, he attempted suicide, and in 2017 was involuntary committed to a psychiatric hospital under the Baker Act for fear he was a danger to himself. On New Years Eve in 2017, about nine months before the murders, Johnson's son committed suicide, which sent Johnson into a "mental spiral." Dr. Machlus testified that at the time of the murders, Johnson's emotional "dam" - - his ability to control his impulses - - had burst.

[Petitioner's Appendix 10a-11a (footnote omitted)].

Whether the "most aggravated" prong of Florida's now-abandoned proportionality standard was met is debatable, but the "least mitigated" prong plainly was not met. As set forth in the Florida Supreme Court's opinion, the trial judge found that:

> three statutory mitigators were established by a greater weight of the evidence: (1) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance (moderate weight); (2) the defendant has no significant history of prior criminal activity (moderate weight); and (3) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired (slight weight).

[Appendix 15a-16a]

Thirty nonstatutory mitigating circumstances were found by the trial judge. The effect on Tyrone Johnson of Devin's suicide was accorded great weight. Fifteen nonstatutory mitigators were accorded moderate weight; these included Johnson's

long history of mental illness; his chronic obsessive-compulsive disorder; his military service; his 2013 diagnosis of depressive disorder by the Veterans Administration; his childhood experiences of witnessing his father's physical and emotional abuse of his mother; his loving relationships with his own four surviving children, and - - of particular importance to the circumstances of the crime - - "while Johnson was employed at the Attorney General's Office in the spring and summer of 2017, he was suffering from an overall deterioration psychologically that led to him being committed for mental health treatment in June 2017"; Johnson did not initiate the physical aggression giving rise to the events in this case"; and "Johnson just prior to the gunshots, called his father and asked him to drive down immediately and take him home to South Carolina.[2] [Appendix 16a-17a, n.7].

The state did not even claim that the shooting of Stephanie was premeditated[3], and the shooting of Ricky Willis occurred in its immediate aftermath. While the short time lapse and the circumstances may have been sufficient to permit the jury - - as it did - - to find that the killing of Ricky was premeditated, this is far from the open-and-

---

[2] Johnson's father had testified about his video phone call with his son just before the shootings. "[H]is emotions, his physical facial features, it was like he had an out-of-body experience or something within him that he just went totally haywire to where it's him but it's not him. And I'm asking him, What's wrong. And he's crying. And, Daddy, come get me." Edward knew there was something "wrong, bad wrong." A female's hand was hitting Tyrone. "And he's saying, Stop hitting me. And then he finally says, Well, they say that's why my son's dead. And I'm like, Who's they? You know, Son, come back. Cool down. Time your time and talk to me. What in the world is going on?" (T2925).

[3] Johnson was charged with and convicted of second-degree murder of Stephanie.

shut death penalty case which the state misportrays in its Brief in Opposition, and very far from being one of the "least mitigated" homicides. Accordingly, far from being a "poor vehicle" [Brief in Opposition, p. 8-9], Johnson's case is actually an excellent vehicle for this Court to address the Florida Supreme Court's misunderstanding of *Pulley v. Harris*, and its abandonment of adequate safeguards against the arbitrary infliction of the death penalty. Florida no longer has the constitutionally required procedures in place to distinguish between the few first-degree murder cases for which death is imposed from the many in which it is not, and it no longer limits capital punishment to the worst of the worst. Consequently, Florida's current capital sentencing scheme violates the Eighth Amendment and the standards set forth in *Furman v. Georgia*, 408 U.S. 238 (1972).

CONCLUSION

Tyrone Johnson's petition for a writ of certiorari should be granted..

Respectfully submitted,

/s/ Steven L. Bolotin

STEVEN L. BOLOTIN (FBN 236365)
Assistant Public Defender
P. O. Box 9000 – Drawer PD
Bartow, FL 33831
(863) 534-4200
sbolotin@pd10.org

ATTORNEY FOR MICHAEL A. GORDON

Dated: January 23, 2025