No.

IN THE SUPREME COURT OF THE UNITED STATES

SHERROD ANTHONY WRIGHT, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the ancient right enshrined in the Sixth Amendment to trial by a twelve-member jury applies to a state court trial for major felonies where the defendant has not personally waived that right.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

State v. Wright, 50–2018-CF-007856-DXXX-MB, judgment entered October 6, 2023, sentence entered July 9, 2024;

Wright v. State, 4D2023–3142, March 6, 2025, rehearing denied April 22, 2024

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Sherrod Anthony Wright respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is reported as *Wright v. State*, No. 4D2023–2663, 2025 WL 716260 (Fla. 4th DCA Mar. 6, 2025). A copy is in the appendix. 1a.

JURISDICTION

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences without written opinion on March 6, 2025. 1a. The court denied Petitioner's motion for rehearing, written opinion and certification to the state supreme court on April 22, 2025. 2a.

The Florida Supreme Court is "a court of limited jurisdiction," *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (citation omitted), Specifically, it has no jurisdiction to review district court of appeal decisions entered without written opinion. *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Hence, Petitioner could not seek review in that court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a … public trial, by an impartial jury … .

The Fourteenth Amendment provides:

> Section 1
>
> … . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

Article I, section 22 of the Florida Constitution provides:

> Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Section 775.082(3)(b) and (d), Florida Statutes (2018) provides:

> (3) A person who has been convicted of any [noncapital] felony may be punished as follows:
>
> …
>
> (b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.
>
> …
>
> (d) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

Section 817.568(2)(b) and (c), Florida Statutes (2018) provides:

> (b) Any person who willfully and without authorization fraudulently uses personal identification information concerning a person without first obtaining that person's consent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $5,000 or more … . Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years' imprisonment.

> (c) Any person who willfully and without authorization fraudulently uses personal identification information concerning a person without first obtaining that person's consent commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $50,000 or more … . If the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more, … notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 10 years' imprisonment.

Section 913.10, Florida Statutes (2018) provides:

> Number of jurors.—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

STATEMENT OF THE CASE

The State of Florida alleged in a fifth amended information that in 2018 Petitioner Wright and another man[1] committed a number of crimes involving the alleged use of the personal identification of another. The most serious charges against Petitioner included three second-degree felony charges of violations of section 817.568(2)(b) and three first-degree felony charges under section 817.568(2)(c), Florida Statutes (2018). R 250–53.

Violations of subsection (b) are punishable by up to 15 years in prison with a three-year mandatory minimum, and violations of subsection (c) are punishable by up to 30 years in prison with a ten-year mandatory minimum. §§ 817.568(2)(b) and (c); 775.082(2)(b) and (d), Fla. Stat. (2018). Petitioner's other charges included two first-degree and two third-degree felonies.

Petitioner invoked his right to a trial by jury. R 119.

In large part, the prosecution case rested on the testimony of Robert Dedeaux and Maurice Jeffries, who had been charged as co-defendants in earlier versions of the information. Bank videos and

[1] This co-defendant's case was severed and he was later sentenced to three years in a community control program for a single charge of grand theft.

records showed Dedeaux and Jeffries used the victim's personal identification information to obtain significant amounts of money from the victim's bank accounts, but they claimed Petitioner put them up to it.

Before Petitioner's trial, Dedeaux entered a guilty plea to ten felonies including four first degree felonies. R 608. He faced a maximum of 180 years in prison. T 174. Under his plea agreement entered in exchange for his testimony, he faced a sentence cap five years below the guideline sentence, and below the ten-year mandatory minimum. T 178.

Jeffries also entered a plea bargain in exchange for his testimony, admitting to nine felonies, three of which were first-degree felonies with a statutory maximum of 30 years in prison and a ten-year mandatory minimum. T 321. He also plead guilty to three second-degree felonies with maximum sentences of 15 years in prison, and a third-degree felony. T 322–23. He faced a statutory maximum of 200 years in prison. T 323. The guidelines minimum was 12 years in prison, and three counts had 10-year mandatory minimums. T 323. Under the plea agreement, the prosecutors were to recommend that he serve no more than 7 years in prison. T 326.

Apparently little persuaded by the veracity of Dedeau and Jeffries, a six-member jury found Petitioner guilty of six misdemeanor counts of unlawful possession of personal identification as lesser-included offenses of six counts of fraudulent use of personal identification, and could not reach a verdict as to the remaining charges. R 426–32. The court imposed a sentence of six consecutive ten month jail sentences. R 522.

Petitioner sought review in Florida's Fourth District Court of Appeal. Among his points on appeal, he argued that the conviction was fundamentally erroneous because Petitioner was tried by a six-member jury in violation of the Sixth Amendment as applied to Florida by the Fourteenth Amendment. 3a–6a. He acknowledged that this Court had held in *Williams v. Florida*, 399 U.S. 78 (1970), that state court juries as small as six were constitutionally permissible under the Sixth Amendment and Florida law. *Ibid.*

Petitioner also acknowledged that the issue had not been raised in the trial court, but pointed out that waiver of the constitutional right of trial by the proper number of jurors must be made personally by the defendant under *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."); *Jones v. State*, 452 So. 2d 643 (Fla. 4th DCA 1984) (reversing capital murder conviction because, although defendant's lawyer stipulated two verdict rendered by eleven jurors after twelfth juror was incapicated, there was no on-the-record written waiver signed by the defendant himself); and *Wallace v. State*, 722 So. 2d 913, 914 (Fla. 2d DCA 1998) (reversing conviction by a jury of five, finding the purported waiver inadequate: "Here, the record does not demonstrate whether Wallace was aware of his constitutional right to a six-member jury, or of his alternatives to proceeding with only five jurors. He did not personally waive his right. This was error. Accordingly, we reverse his conviction and remand for a new trial."). 5a–6a, 7a–9a. Such a personal waiver did not occur at bar.

The district court of appeal affirmed the conviction and

sentence without opinion, 1a, and denied Petitioner's motion for rehearing and certification to the state supreme court. 2a. Petitioner now seeks review in this Court.

REASONS FOR GRANTING THE PETITION

THE REASONING OF *WILLIAMS v. FLORIDA* HAS BEEN REJECTED, AND THE CASE SHOULD BE OVERRULED.

Perhaps the most ancient requirement of our legal system is the right to trial by a jury of twelve persons.

In *Thompson v. Utah*, 170 U.S. 343 (1898), the Court noted that since the time of Magna Carta, the word "jury" had been understood to mean a body "of twelve persons, neither more nor less":

> Assuming, then, that the provisions of the constitution relating to trials for crimes and to criminal prosecutions apply to the territories of the United States, the next inquiry is whether 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, neither more nor less. 2 Hale, P. C. 161; 1 Chit. Cr. Law, 505.1 Chit. Cr. Law, 505. This question must be answered in the affirmative. When Magna Charta declared that no freeman should be deprived of life, etc., 'but by the judgment of his peers or by the law of the land,' it referred to a trial by twelve jurors. Those who emigrated to this country from England brought with them this great privilege 'as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on

> every side against the approaches of arbitrary power.' 2 Story, Const. § 1779. In Bac. Abr. tit. 'Juries,' it is said: 'The trial per pais, or by a jury of one's country, is justly esteemed one of the principal excellencies of our constitution; for what greater security can any person have in his life, liberty, or estate than to be sure of the being devested of nor injured in any of these without the sense and verdict of twelve honest and impartial men of his neighborhood? And hence we find the common law herein confirmed by Magna Charta.' So, in 1 Hale, P. C. 33: 'The law of England hath afforded the best method of trial that is possible of this and all other matters of fact, namely, by a jury of twelve men all concurring in the same judgment, by the testimony of witnesses viva voce in the presence of the judge and jury, and by the inspection and direction of the judge.' It must consequently be taken that the word 'jury' and the words 'trial by jury' were placed in the constitution of the United States with reference to the meaning affixed to them in the law as it was in this country and in England at the time of the adoption of that instrument; and that when Thompson committed the offense of grand larceny in the territory of Utah—which was under the complete jurisdiction of the United States for all purposes of government and legislation—the supreme law of the land required that he should be tried by a jury composed of not less than twelve persons. And such was the requirement of the statutes of Utah while it was a territory.

Id. at 349–50.

In addition to the citations as to this point in *Thompson*, one may note that Blackstone indicated that the right to a jury of twelve was 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"). Blackstone traced the jury trial back to the ancient feudal system of trial by "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").

After *Thompson*, the Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for another seventy years. In 1900, the Court explained that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow*, 176 U.S. 581, 586 (1900). Thirty years later, this Court reiterated that it was "not open to question" that "the phrase 'trial by jury' " in the Constitution incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States*, 281 U.S. 276, 288 (1930). And as recently as 1968, the

Court remarked that "by the time our Constitution was written, jury trial in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana*, 391 U.S. 145, 151–152 (1968).

In *Williams v. Florida*, 399 U.S. 78 (1970), however, the Court abruptly broke from this line of precedent based on the ancient right as understood by the People when adopting the Bill of Rights, and held that trial by a jury of six does not violate the Sixth Amendment. It did so based on the majority's reading of social science literature and an anti-historical functionalist reading of the Constitution.

Williams recognized that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Id.*, 399 U.S. at 98–99. But it concluded that such "purely historical considerations" were not dispositive. *Id.* at 99. The majority then boldly abandoned history in pursuit of a functionalist approach:

> Nothing in this history suggests, then, that we do violence to the letter of the Constitution by turning to other than purely historical considerations to determine

> which features of the jury system, as it existed at common law, were preserved in the Constitution. The relevant inquiry, as we see it, must be the function that the particular feature performs and its relation to the purposes of the jury trial. Measured by this standard, the 12-man requirement cannot be regarded as an indispensable component of the Sixth Amendment.

Id. at 99–100.

Based on its view of the "function" that the jury plays in the Constitution, the majority wrote that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id.* at 100–01. It concluded that "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101–102 & n.48; *cf. Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

Petitioner submits that *Williams* is contrary to the history and precedents discussed above, and cannot be squared with the subsequent ruling in *Ramos v. Louisiana*, 590 U. S. 83 (2020), that the Sixth Amendment's "trial by an impartial jury" requirement

encompasses what the term "meant at the Sixth Amendment's adoption." *id.* at 90. That term meant trial by a jury of twelve whose verdict must be unanimous. As the Court noted in *Ramos*, Blackstone recognized that under the common law, "no person could be found guilty of a serious crime unless 'the truth of every accusation . . . should . . . be confirmed by the unanimous suffrage of twelve of his equals and neighbors[.]" *Ibid.* (emphasis added). "A 'verdict, taken from eleven, was no verdict' at all." *Ibid.*

Ramos held that the Sixth Amendment requires a unanimous verdict to convict a person of a serious offense. In reaching that conclusion, it overturned *Apodaca v. Oregon*, 406 U.S. 404 (1972), a decision that it faulted for "subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." 509 U.S. at 100.

The reasoning of *Ramos* undermines the reasoning on which *Williams* rests. *Ramos* rejected the same kind of "cost-benefit analysis" undertaken in *Williams*, observing that it is not for the Court to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'"

590 U.S. at 98. The Court wrote that the Sixth Amendment right to a jury trial must be restored to its original meaning, which included the right to jury unanimity:

> Our real objection here isn't that the *Apodaca* plurality's cost-benefit analysis was too skimpy. The deeper problem is that the plurality subjected the ancient guarantee of a unanimous jury verdict to its own functionalist assessment in the first place. And Louisiana asks us to repeat the error today, just replacing *Apodaca*'s functionalist assessment with our own updated version. All this overlooks the fact that, at the time of the Sixth Amendment's adoption, the right to trial by jury *included* a right to a unanimous verdict. When the American people chose to enshrine that right in the Constitution, they weren't suggesting fruitful topics for future cost-benefit analyses. They were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed. As judges, it is not our role to reassess whether the right to a unanimous jury is "important enough" to retain. With humility, we must accept that this right may serve purposes evading our current notice. We are entrusted to preserve and protect that liberty, not balance it away aided by no more than social statistics.

Ramos, 590 U.S. at 100 (emphasis in original; footnote omitted).

The same reasoning applies to the historical right to a jury of twelve: When the People enshrined the jury trial right in the Constitution, they did not attach a rider that future judges could adapt it based on latter-day social science views.

The Court has recognized that the Sixth Amendment

guarantees the right to a jury trial as to all nonpetty offenses. *See Ramos* and *Blanton v. City of N. Las Vegas, Nev.*, 489 U.S. 538 (1989). The charges against Petitioner were plainly not petty. Like co-defendants Dedeaux and Jeffries, he faced a maximum sentence of a hundred years or more with several long mandatory minimum terms. He was entitled to a jury trial as guaranteed since ancient times — a jury composed of twelve persons. He never personally waived that right.

Florida courts have uniformly rejected arguments that Florida's practice of trial by six-member juries should be revisited. *See Brown v. State*, 359 So. 3d 408, 410 n.1 (Fla. 1st DCA 2023) (rejecting as "nearly frivolous" claim that defendant charged with armed robbery and kidnapping was entitled to trial by jury of twelve); *Serrano-Delgado v. State*, 392 So. 3d 251 (Fla. 2d DCA 2024) (holding defendant was not entitled to jury of twelve on charge of sexual battery on a child under age of twelve); *Kain v. State*, 393 So. 3d 786, 787 (Fla. 3d DCA 2024) ("Affirmed. *See Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (holding Florida's use of six-member jury in non-capital cases does not violate the Sixth Amendment right to trial by jury");

Guzman v. State, 350 So. 3d 72 (Fla. 4th DCA 2022) (holding defendant was not entitled to twelve-member jury at trial for sexual battery on a child under age of twelve), *rev. denied* SC2022–1597, 2023 WL 3830251 (Fla. June 6, 2023), *cert. denied* 144 S. Ct. 2595 (2024); *Simpson v. State*, 368 So. 3d 513, 514 (Fla. 5th DCA 2023) (noting that panel was rejecting claim that defendant charged with attempted murder was entitled to trial by a jury of twelve persons).

These decisions are binding on the trial courts of Florida. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("in the absence of interdistrict conflict, district court decisions bind all Florida trial courts"). Further, the state constitution and state specifically authorize six-member juries in noncapital criminal cases. Fla. Const., art. I, § 22 ("The qualifications and the number of jurors, not fewer than six, shall be fixed by law."; § 913.10, Fla. Stat. ("Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.").

So only this Court can right the dilution of the Sixth Amendment wrought in *Williams*. Petitioner calls upon this Court to grant this petition, recede from *Williams*, and restore the ancient right to a twelve-member jury, and reverse Petitioner's convictions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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