No.

In the
Supreme Court of the United States

MATTHEW CAYLOR,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

JESSICA J. YEARY
Public Defender

BARBARA J. BUSHARIS*
Assistant Public Defender
**Counsel of Record for Petitioner*

SECOND JUDICIAL CIRCUIT OF FLORIDA
OFFICE OF PUBLIC DEFENDER
301 South Monroe Street, Ste. 401
Tallahassee, Florida 32301
(850) 606-1000
barbara.busharis@flpd2.com

CAPITAL CASE

QUESTIONS PRESENTED

I. Whether accepting a defendant's waiver of the right to a trial by jury and the jury's full consideration of mitigating evidence in a death penalty case violates a defendant's fundamental rights to a fair trial, individualized sentencing determination, and due process, as well as this Court's requirement of voluntary, knowing, and intelligent waivers of constitutional rights, when the waivers are based on misinformation about an existing fact and that misinformation is not corrected before the waivers are accepted.

II. Whether, considering the operation and effect of Florida's capital sentencing scheme, the Due Process Clause requires the factfinder to determine beyond a reasonable doubt that sufficient aggravating factors exist and that aggravating factors outweigh mitigating circumstances before the sentencer can choose to impose the death penalty, pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 476-85, 490, 494 n.19 (2000) and *Ring v. Arizona*, 536 U.S. 584, 603-05, 609 (2002).

STATEMENT OF RELATED PROCEEDINGS

State v. Caylor, Case No. 08-2244-CF (14th Jud. Cir., Bay Cty, Fla.)

Caylor v. State, 78 So. 3d 482 (Fla. 2011) (affirming original death sentence)

Caylor v. State, 218 So. 3d 416 (Fla. 2017) (granting resentencing following post-conviction proceedings)

Caylor v. State, 407 So. 3d 379 (Fla.), *reh'g denied*, SC2023-0338, 2025 WL 1135278 (Fla. Apr. 17, 2025) (affirming death sentencing following resentencing)

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

PAGES

Cases

Statutes

Constitutional Provisions

Other Authorities

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion below is reported at *Caylor v. State*, 407 So. 3d 379 (Fla.), *reh'g denied*, SC2023-0338, 2025 WL 1135278 (Fla. Apr. 17, 2025), and a copy is attached to this Petition as Appendix A. The order of the Florida Supreme Court denying Petitioner's motion for rehearing is attached to this Petition as Appendix B. The trial court order imposing a death sentence is attached as Appendix C.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed…"

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or 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."

INTRODUCTION AND STATEMENT OF THE CASE

Petitioner, Matthew Caylor, was originally convicted of killing Melinda Hinson following a jury trial held in 2009. The jury recommended the death penalty by a vote of 8 to 4. *See Caylor v. State*, 78 So. 3d 482, 486 (Fla. 2011). His conviction and sentence were affirmed on direct appeal. *Id.* In 2017, the Florida Supreme Court affirmed the denial of postconviction relief but granted Mr. Caylor's petition for writ of habeas corpus based on *Hurst v. Florida*, 577 U.S. 92, 136 S. Ct. 616 (2016). *See Caylor v. State*, 218 So. 3d 416, 424-25 (Fla. 2017). The court remanded the case for a new penalty phase proceeding. *Id.* at 425. A resentencing hearing was held in the Circuit Court for the Fourteenth Circuit, Bay County, on November 17, 2021, followed by a *Spencer*[1] hearing on April 6, 2022, which was rescheduled to November 18, 2022. The trial court resentenced Mr. Caylor to death on February 9, 2023.

The Penalty Phase.

Eight years after his initial conviction, Mr. Caylor's sentence was vacated and the case remanded for a new penalty phase proceeding, at which jury unanimity would be required to impose a death sentence. On January 10, 2020, Mr. Caylor signed a pro se "Notice by Defendant of his knowing, intelligent and voluntary waiver of a sentencing proceeding by a jury and to waive his presence at the sentencing proceeding before the court." (R. 275-78.) The court docket reveals

[1] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

the pro se notice was re-sent on October 19, 2020 and filed with the court on October 27, 2020. (R. 275.)

Meanwhile, on January 29, 2020 the State had filed State's Motion to Reinstate Death Sentence, asking the Florida Supreme Court to reinstate Mr. Caylor's death sentence based on a decision that court had just issued receding from the requirement of a unanimous recommendation of death. (R. 270-72.) No additional proceedings took place for over a year while the motion was pending; the motion eventually was denied on March 25, 2021. (R. 270-72, 287-88.)

Unbeknownst to Mr. Caylor, Rhonda McNalin, Melinda Hinson's mother, had died in January 2021.

On May 19, 2021 the court held a Zoom hearing at which counsel informed the court that Mr. Caylor had changed his mind and wished to withdraw his waivers. (R. 311-12.) The court confirmed directly with Mr. Caylor that he no longer wished to waive a jury trial in the penalty phase. (R. 314.) Mr. Caylor stated, "I want a jury trial. I want the opportunity to present a case to the Court." (R. 320.) The court found Mr. Caylor's pro se notice had been withdrawn. (R. 316, 330-31.) Mr. Caylor informed the court of his prior reasoning for waiving a jury trial: he told the victim's family that he would accept whatever sentence he received. (R. 318-19.) He changed his mind and decided to fight for a life sentence only when he realized his sentence was unconstitutional. (R. 319-20.) Mr. Caylor also requested new counsel, stating that he lacked confidence in his appointed attorneys. (R. 318-25.)

The Court continued the hearing to allow Mr. Caylor an opportunity to put concerns regarding his counsel in writing and to conduct a *Nelson* hearing. (R. 325.)

On June 24, 2021, Mr. Caylor mailed a letter informing the court that he no longer wanted to replace his appointed counsel but, instead, wished to waive a jury, his presence, and mitigation. (R. 352-53.) Mr. Caylor apologized to the court for the "back and forth" and said his requested waivers were "the right thing to do." (R. 352.) The court construed this as a "Notice of Voluntary Waiver of a Sentencing Proceeding by a Jury, Defendant's Presence at Sentencing, and Presentation of Mitigating Evidence" and set a hearing date in August. (R. 354.) Mr. Caylor reiterated his wishes in a second letter sent on August 4, 2021, and filed August 18, 2021, the date of the hearing. (R. 355.)

On August 18, 2021, the court held a hearing at which Mr. Caylor again informed the court that he no longer wished to discharge his attorneys. (R. 362.) The court inquired about his ability to understand the consequences of his waiver of a jury trial. (R. 363-75.) During the colloquy that followed, Mr. Caylor acknowledged a history of depression but said he was not experiencing anything that would impair his decision about how to proceed. (R. 366.) He said he had been diagnosed with bipolar disorder, personality disorder, mood disorder, and depression; he had previously been on medication (Depakote and lithium) but stopped taking the medication two or three years before the hearing and relied on talking with a counselor to manage his symptoms. (R. 367.)

Mr. Caylor explained the reason for his waivers was a promise he had made to Rhonda McNalin, Melinda Hinson's mother:

> I made a promise 13 years ago to Rhonda that I would — and this is before I was — even knew I was going to get a death sentence or life. … And I promised her 13 years ago that I would not drag her family through the appeals process. That I would accept whatever it was that I was given, and I would take responsibility. And I would not do this to her family.
>
> Unbeknownst to me after I was sentenced to death, I had an 8/4 vote, I did not know that a direct appeal was imminent and that I could not waive that. And I received a letter from the family asking me why. And I told her and I wrote her back and told her that I didn't know what was going on. I don't know this — I don't know the process. And that I'm not trying to waive anything — or appeal anything, and that I was going to fulfill my promise to her and her family. And I didn't hear back from her. I wrote her back again, I didn't hear from her.
>
> And so from that day up until now, 13 years later, that's haunted me. Because I feel like the one thing that I could do for this family is fulfill my promise to them. And inadvertently it was — it was beyond my control. I had no — I didn't know what a direct appeal was. And so — and then moving forward a little bit, I've allowed others to get in my head and talk me out of what I wanted, I knew in my heart was the right thing to do.

(R. 375-76.)

Mr. Caylor continued that people in his own family did not understand his reasoning, but that he was thinking about Ms. Hinson's family. (R. 377.) He said he wanted the family to have closure. (R. 378.) The court accepted his waiver of a penalty phase jury. (R. 379.)

Next, Mr. Caylor stated he wanted to waive mitigation, saying there was no excuse for what had happened. (R. 380.) Defense counsel indicated Mr. Caylor had declined a mental health evaluation. (R. 385.) After inquiring into his understanding of the consequences of waiving mitigation the court found his waiver was informed and voluntary (R. 380-88). Finally, the court inquired about his decision to waive his physical presence, and again accepted the waiver. (R. 389-97.) The court later entered a written order accepting all three waivers. (R. 404-05.)

Mr. Caylor requested that Ms. McNalin be informed of his waivers:

> I wanted to ask the Court is it possible that Mr. Basford or somebody in the court could contact Rhonda and tell her that I'm sorry that I have put her through this this long. It's over now. I'm going to fulfill my promise to her. And that I apologize. And, you know, I'm just sorry.

(R. 398.) He also asked that she be provided with a link to the Zoom resentencing hearing. (R. 398.)

Mr. Caylor's resentencing hearing was held on November 17, 2021. (R. 459.) Before presenting any evidence or testimony the State requested that the court first confirm with Mr. Caylor, who appeared by Zoom, that he wanted to maintain his waivers. (R. 461-62.) After Mr. Caylor's waivers had been confirmed and the State was about to begin the penalty phase presentation, the State informed the court and defense that Ms. McNalin was, in fact, deceased. (R. 463.) The court did not offer defense counsel or Mr. Caylor, who by virtue of appearing remotely did not have the benefit of being present and able to consult with counsel in the courtroom,

the opportunity to confer. Nor did the court inquire as to whether this new discovery changed his decision regarding waivers.

The State did not call any live witnesses at the penalty phase trial. Instead, the State asked the court to take judicial notice of the existing record, including transcripts from former proceedings, and offered victim impact letters, including one from Ms. McNalin. (R. 463-64.) The State informed the court that a forensic evaluation of Mr. Caylor would be forthcoming in January 2022, and the court indicated it would wait for that report to hold a *Spencer* hearing. (R. 467.) At that point, Mr. Caylor asked if he could make a statement and the court said he would have the opportunity to do so at the *Spencer* hearing. (R. 469.) The court did not inquire as to whether Mr. Caylor had anything else he wanted to say in the penalty phase. (R. 471.) Instead, the court closed the evidence and heard victim impact letters written by Rhonda McNalin; Brennan Hinson, Melinda's step-brother; Brandy Hinson, her stepmother; and Ron Perkins, her grandfather. (R. 472-75.)[2]

Attempts to Withdraw Waivers

The *Spencer* hearing was originally scheduled for April 6, 2022, after the State notified the court at a status conference on March 8 that their expert's report had still not yet been received. (R. 485.) Between the March 8 status conference and April 6 hearing, the defense filed "Defendant's Motion to

[2] Mr. Caylor later informed the court that, in addition to not knowing Ms. McNalin had died, he did not know before the November hearing that Brandy and Brennan Hinson had died a few years earlier. (R. 598.) Although the date of their death was not placed in the record, press reports reveal they were killed in a house fire in Kentucky in 2018.

Withdraw Waiver of a Sentencing Proceeding by a Jury, Defendant's Presence at Sentencing & Presentation of Mitigating Evidence." (R. 494-95.) The State filed a response in opposition. (R. 497-525.)

Mr. Caylor also sent a handwritten letter to the court on March 28, 2022, which was filed on April 6, 2022, stating he would not have entered his waivers if he knew Ms. McNalin was already dead and had been since January 2021. (R. 572-73.)

The Court postponed the April 6 *Spencer* hearing and, instead, heard argument on Mr. Caylor's request to withdraw his waivers. The basis for his request was that his waivers were premised on his feeling of obligation to the victim's mother, and that her death before the August hearing changed that premise:

> …I have made it blatantly clear that the entire reason that I was willing to waive my Constitutional rights to a jury trial, mitigation, and presence was for Rhonda, and I made that promise to her 13 years ago, close to.
>
> And so events have came up since then and I've kind of wavered back and forth. There was some situations that happened after my sentencing, a direct appeal happened; she wrote me and asked me why am I appealing after I promised I wouldn't? I was not aware my direct appeal was automatic. Things kind of went downhill from there.
>
> I have decided on a few occasions to move forward with appeals; the entire time it was on my conscience, I felt that I wasn't doing the right thing. And so yes, there has been a few times I've went back and forth, but I had finally made a decision that I'm going to do what I said I would do, and I filed to waive these.
>
> We had a Zoom meeting, I even asked this Court could you please notify Rhonda, help me to get in touch with Rhonda, however we have to do it, to let her know that this is ended, this is over, I'm going to do what I said I would do, and that's final. Unbeknownst to me, she had already been passed away. Nobody told me this. Even

> while I was making requests to have contact with her, no one told me, Mr. Basford, my attorneys, nobody. So we carried on, we moved forward, I waived my Constitutional rights not knowing this information; three months later we had a bench trial, and I find out on the day of the bench trial that she had been passed away since January of 21.
>
> I have lost my son, my oldest son, military, he's in the military, he's in the Marines, he has refused to talk to me anymore or visit me or write me because of my decision to waive. I have lost other people in my life that feel that me making that decision was selfish and that I didn't care about them. And no one bothered to tell me that the person I was doing this for is not alive, had passed away, and I find out on the day of the bench trial.
>
> And even though we found out — now, I can't say when my attorneys knew, you know, I asked him, I asked the Collinses when they knew, they said they didn't recall, and then they said that they found out on the day that I found out. But no one stopped the bench trial to say hey, you know, the whole reason you're doing this, she's not here anymore. They even went on to read a victim impact statement from her as if she was alive still.
>
> And when I found this out, I was in a panic. I would have, if I had been told before I waived, that Ms. McNalin, Rhonda would have passed away, I never would have waived my Constitutional rights.

(R. 580-82.)

Mr. Caylor reiterated before the hearing was adjourned that he would not have waived his constitutional rights had he had the information the State did — that Ms. McNalin was deceased. (R. 597.)

On May 26, 2022, the court entered an order denying the defense motion to the extent it requested a sentencing proceeding and penalty phase jury, but partially granting it to allow the presentation of some mitigation at the *Spencer*

hearing. (R. 603-07.) The order stated that, before learning of Ms. McNalin's death, Mr. Caylor's references to his promise to her had also included promises to her family. (R. 604.) The order also stated that the delay between the November 17, 2021 hearing and Mr. Caylor's request to withdraw his waivers indicated he was acting to delay the proceedings. (R. 605.)

Mr. Caylor then wrote to the court asking to waive his physical presence at the rescheduled *Spencer* hearing and to appoint substitute counsel. (R. 608, 610, 613-26.) The court conducted a *Nelson* hearing on the issue of substitute counsel on June 21, 2022. (R. 613). Mr. Caylor informed the court he "had little to no contact with [his counsel] from the very beginning," stating, "I do not feel confident going forward with the Collinses on [the presentation of additional mitigation at the *Spencer* hearing]." (R. 615-16.) He continued: "I'm asking the Court to dismiss the Collinses from my case entirely and appoint me new representation so that we can, then, put together a *Spencer* hearing with this mitigation and, then, move forward from there." *Id*. Following the hearing, the trial court denied Mr. Caylor's requests both to waive physical presence and to appoint substitute counsel in written orders on July 27, 2022. R. 630-31, 632-33, 634-35.)

Mr. Caylor renewed his request to withdraw his waiver of a penalty phase jury in a letter dated September 22, 2022. (R. 664-69.) The court denied the renewed request without an additional hearing.

***Spencer* Hearing.**

A *Spencer* hearing took place on November 18, 2022. The defense presented letters from the mother of Mr. Caylor's son, who wrote about Mr. Caylor's remorse, bipolar disorder, faith in God, and relationship with their son; a friend who met Mr. Caylor when her son was incarcerated with him, who wrote about his remorse and the pain his execution would cause for the people who cared about him; and another friend who also wrote about his deep remorse for his actions. (R. 817, 819, 821, 946-52.) The defense also presented Mr. Caylor's disciplinary records while in the Department of Corrections. (R. 953-54.)

Kimberly Ann Caylor, Mr. Caylor's mother, and Kerry Wendall Caylor, Mr. Caylor's father, acknowledged physical abuse inflicted by Mr. Caylor's father when Mr. Caylor was a small child, including shaking and blows to the head. (R. 956-59, 980-85.) Kerry Caylor had previously testified[3] that he started physically abusing Mr. Caylor when Mr. Caylor was just a baby, and described an incident when Mr. Caylor would not stop crying and his father "cut his breath off with my hands." (R. 899.) Three times in a row he held Mr. Caylor's mouth and nose shut; he admitted "I could have killed that poor boy by doing that." (R. 900.) Another time while Mr. Caylor was an infant his father "popped" him "in the head so hard right between the eyes in the forehead." (R. 914.) Later, Kerry Caylor admitted, he screamed at Mr. Caylor "constantly" and called him foul names. (R. 900-01.) He beat Mr. Caylor enough to leave bruises and, as Mr. Caylor got older, would sometimes kick him as

[3] His previous testimony was placed in the record during the penalty phase trial.

well. (R. 903-04.) From the time Mr. Caylor was about 11 years old, his parents both abused methamphetamine and marijuana, and Mr. Caylor started using drugs himself when he was about 14 or 15. (R. 960-61, 987-90.) Mr. Caylor and his brother were left to fend for themselves and on one occasion Ms. Caylor woke up to find them eating toothpaste because they were so hungry. (R. 905, 962-63.)

In addition, Mr. Caylor was molested by a family friend, a police officer his parents had invited into their home to help with finances without realizing his main motivation was access to Mr. Caylor. (R. 906-07, 966-67, 992-94.) The abuse lasted for two or three years. (R. 994-96.) Mr. Caylor finally left the house when he was 15 or 16 years old and had a difficult relationship with his father. (R. 968-69.) He had a history of suicide attempts. (R. 912-13, 996-97.)

Ms. Caylor testified about the sincerity of Mr. Caylor's remorse and deep faith. (R. 977-78.) Kerry Caylor also said Mr. Caylor was genuinely remorseful and that he had "had a complete reverse in the way he thinks" once he stopped abusing drugs. (R. 998-99.) Other witnesses who testified to Mr. Caylor's remorse were Sara Tokarsky, who got to know Mr. Caylor through a Catholic organization that supports death row prisoners (R. 1009-12), and Ronald McAndrew, a former warden at Florida State Prison (R. 1262). Ms. Tokarsky said she was aware Mr. Caylor's family was not supportive of waiving his rights; some family members even refused to talk to him because of it. (R. 1012-13.) Mr. McAndrew, who testified as an expert in prison policies, practices, and conditions (R. 1215-22), stated Mr. Caylor's DOC

records revealed Mr. Caylor had "absolutely no violence throughout his incarceration." (R. 1224.)

Dr. Jethro Toomer, an expert in clinical and forensic psychology who met with Mr. Caylor in 2018 and 2022, took an extensive history and performed a clinical assessment during those meetings. (R. 1018-23, 1026-30.) He concluded that Mr. Caylor had experienced "significant trauma" and "a significantly impaired developmental history." (R. 1030-31.) He noted that Mr. Caylor was born to teen parents, and experienced abuse, neglect, lack of support, lack of safety, exposure to drugs, and violence from an early age. (R. 1032.) After describing what he had learned about Mr. Caylor's upbringing, he stated:

> When individuals are in this kind of environment, one thing that happens is the individual learns not to trust. The individual basically devotes all of his or her energy to doing one thing, and that's survival. So what you get is an individual who advances chronologically, but psychologically and developmentally remains fixated at a much younger chronological age. And … unless there is some intervention, that individual is going to be impaired throughout life.

(R. 1036.)

Dr. Toomer also opined that, at the time of the offense, Mr. Caylor was suffering a number of symptoms of mental illness:

> [H]is symptomatology is reflective of post-traumatic stress disorder, it's reflective of substance abuse, it's reflective of borderline personality disorder or unspecified personality disorder, and the likelihood of neurocognitive disorder.

(R. 1041.)

Dr. Daniel Buffington, an expert in clinical pharmacology and toxicology (R. 1070-74), testified that Mr. Caylor demonstrated "an abundance of evidence of PTSD" along with suicidal ideation and a history of "very potent psychiatric medications." (R. 1076.) Dr. Buffington opined that, at the time of the offense, Mr. Caylor was experiencing the psychiatric and behavioral effects of polysubstance abuse, which is associated with "aggression, violence, impulsivity, irritability, delusions, [and] hallucinations." (R. 1080.) Mr. Caylor was abusing ecstasy, cocaine, methamphetamine, and marijuana at the time of the offense, and experiencing side effects such as paranoia, anxiety, and auditory hallucinations. (R. 1083.) These side effects would have caused a change in mood, judgment, and impulse control, and were magnified by his psychiatric history. (R. 1084, 1087.) Looking at the mitigating factors set out in section 921.141, Florida Statutes, Dr. Buffington opined that Mr. Caylor demonstrated three: that the offense was committed while he was under extreme mental or emotional distress, that his capacity to understand was impaired, and polysubstance abuse. (R. 1087-88.)

Mr. Caylor testified about his childhood, the physical and sexual abuse he had experienced, and his parents' drug use. (R. 1127-54.) After he left home and met his wife, he used methamphetamine and marijuana regularly. (R. 1155-58.) His daughter was born when he was 18, and his son was born 15 months later. (R. 1158-59.) His drug use prevented him from holding down regular employment, so his wife worked as a dancer for several years. (R. 1159-60.)

Mr. Caylor expressed remorse for the events leading up to Melinda Hinson's death, saying he wished he could go back in time. (R. 1161-79.) He was asked about his waivers and said his family members could not understand why he would waive a jury. (R. 1179-80.) He stated it was "about Rhonda [McNalin]. She lost her daughter. You know, for the longest time, I felt like I couldn't have a relationship with my son, or with my youngest son, right, or with my daughter, if she so chose to. Why should I have — why should I be able to see my kids and Rhonda can't, right? So I struggled with that. And I'm just sorry. I'm sorry to everyone." (R. 1180-81.) He stated if he had the opportunity to live out his life in prison he would be able to help others by encouraging them to get a GED, teaching them music, or speaking with them about God. (R. 1181-82.)

The final witness was Devin Lee McCloud, Mr. Caylor's son. (R. 1265.) At the time he testified, he was serving in the U.S. Marine Corps as an aviation radar technician and marksmanship instructor. (R. 1266-67.) Mr. McCloud did not have a relationship with his father from the time he was 5 until he was 20, but stated they had built a relationship since then. (R. 1267.) He said he had been suspicious of his father when they first got reacquainted but that his father had not been manipulative towards him and, on the contrary, had been supportive of him. (R. 1268-69.) He said his father had turned his life around and asked that his life be spared. (R. 1269.)

The Sentencing Order.

In its written sentencing order, attached as Exhibit C, the court found three aggravating factors had been proven beyond a reasonable doubt: that Mr. Caylor was on felony probation in Georgia at the time of the offense and had absconded from supervision; that the capital felony was committed in the course of a sexual battery and aggravated child abuse; and that the capital felony was especially heinous, atrocious, or cruel. The court assigned great weight to each of these aggravating factors. (R. 1300-02.)

The court found the statutory mitigating circumstance that Mr. Caylor was acting under the influence of an extreme mental or emotional disturbance had been proven by the greater weight of the evidence, and assigned it medium weight. (R. 1302-04.) The order referenced Mr. Caylor's history of suicide attempts, early exposure to drug use, sexual abuse, and diagnosis with chronic post-traumatic stress disorder, bipolar disorder, and cocaine dependence. (R. 1303.) The court also found it had been proven by the greater weight of the evidence that Mr. Caylor grew up in a dysfunctional family where abuse and neglect were common due to the drug addiction of Mr. Caylor's parents, and assigned that mitigator medium weight. (R. 1304.) The court found several other mitigating circumstances had been proven, but assigned them little weight: that Mr. Caylor had learning difficulties in school; that he was a good employee and good with animals; that he was a good father who had renewed a relationship with his adult son; that he was remorseful; that he had a

long history of abusing controlled substances; and that his conduct in prison had been good. (R. 1304-06.)

The court concluded:

> In weighing aggravating factors and mitigating circumstances, this Court employs a qualitative analysis as to the nature of each factor and circumstance that has been established. The Court finds that the aggravating factors in this case far outweigh the mitigating circumstances. […] As to Count I of the Indictment, for the murder of Melinda D. Hinson, the Court sentences you to be put to death in the manner prescribed by law.

(R. 1306.)

The Direct Appeal.

On appeal, Mr. Caylor raised three issues: that the court erred in denying his motion to withdraw his waiver of a penalty phase jury; that the court erred in denying his motion to withdraw his waiver of mitigation and in preventing the presentation of a full mitigation case; and that the Florida capital sentencing scheme is constitutionally deficient because it allows certain findings to be made without attributing a burden of proof.

The Florida Supreme Court affirmed on all issues. The court relied on *United States v. Ruiz*, 536 U.S. 622 (2002) for the premise that "the death of the victim's mother cannot retroactively negate Caylor's understanding of *his* right to have a penalty phase jury at the time he waived it." Appendix A at 13 (emphasis in original). The court added that "Caylor's internal motivation about the victim's mother and ignorance of her death does not go to the nature of, nor his understanding about, *his* right to a jury." Id. (emphasis in original). The court used

similar reasoning to hold that "Caylor's desire to spare the victim's mother is not constitutionally relevant to his understanding of his right to waive mitigation." Id. at 14. The court also rejected the argument that Florida's capital sentencing scheme is constitutionally deficient because it does not require proof beyond a reasonable doubt that aggravating factors outweigh the mitigating circumstances. Id.

A timely motion for rehearing was denied without further discussion. *See* Appendix B.

REASONS FOR GRANTING THE PETITION

I. The Court's Denial of Mr. Caylor's Motion to Withdraw His Waivers of a Sentencing Phase Jury and Consideration of Mitigating Evidence Unconstitutionally Obstructed His Fundamental Rights Because his Waivers Did Not Meet this Court's Standard for "Knowing" and "Intelligent" Waivers under *Brady*.

The Sixth, Eighth, and Fourteenth Amendments to the United States Constitution guarantee a defendant's right to a jury sentencing determination and full consideration of mitigating circumstances by the factfinder for the constitutional imposition of the death penalty. *See* U.S. Const. amend. VI; U.S. Const. amend. VIII; U.S. Const. amend XVI; *see also Hurst v. Florida*, 577 U.S. 92, 102-03 (2016) (holding the Constitution guarantees the right to be sentenced to death based on "a jury's verdict, not a judge's factfinding"); *Ring v. Arizona*, 56 U.S. 584, 609 (2002) (holding the right to a trial by jury under the Sixth Amendment guarantees the right to a jury sentencing determination); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)) ("[T]he fundamental respect for humanity underlying the Eighth Amendment…requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death."). Because Mr. Caylor's exercise of his constitutional rights to a jury sentencing determination and consideration of mitigating evidence were denied in the absence of a valid waiver,

his rights to a fair trial, to be free from cruel and unusual punishment, and to due process were violated.

Waivers of fundamental constitutional rights are only valid if they are voluntary, knowing, and intelligent, and made with "sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). In the absence of a valid waiver, any deprivation of these fundamental constitutional rights is a violation of due process. The court below, however, denied Mr. Caylor his right to a jury sentencing determination, despite there being no valid waiver of his rights. This was a violation of Mr. Caylor's right to a fair trial, individualized sentencing determination, and due process.

To determine whether a waiver is knowing and voluntary, a court must consider the totality of the circumstances surrounding that waiver. *See Brady*, 397 U.S. at 749 ("The voluntariness of [the defendant]'s plea can be determined only by considering all the relevant circumstances surrounding it."). In *Brady*, this Court approved of a standard for the voluntariness of guilty pleas that focuses on the *defendant's knowledge* at the time of entering a plea, including whether he was operating under misinformation:

> (A) plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), *misrepresentation* (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).

397 U.S. at 755 (internal citation omitted) (emphasis added). A defendant must also have "both the capacity to make an understanding choice and an absence of subverting factors so that the choice is clearly free and responsible." *Von Moltke v. Gillies*, 332 U.S. 708, 729 (1948) (Frankfurter, J., separate opinion). "[T]he law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply in general in the circumstances—even though the defendant may not know the specific detailed consequences of invoking it." *Ruiz v. United States*, 536 U.S. 622, 629 (2002) (emphasis omitted). But an improperly induced plea is a violation of due process even if the person is "fully aware of the direct consequences." *Brady*, 397 U.S at 755.

Although here Mr. Caylor was aware that the direct consequences of his waivers were to forgo a jury sentencing determination and consideration of mitigating evidence, his waivers were induced by misinformation regarding an unfulfillable promise: that his waivers would benefit the victim's mother. Mr. Caylor repeatedly made clear that his waivers were based on his sincere belief that it was necessary to honor a promise and bring closure to the victim's mother. However, unbeknownst to Mr. Caylor, this was an impossibility because the victim's mother was already dead. At the moment of no return — the beginning of Mr. Caylor's penalty phase trial — the State, knowing she was deceased, asked the Court to confirm Mr. Caylor's waivers before disclosing that critical fact. The court did not inquire of Mr. Caylor whether the revelation affected his decision to

waive and did not break the proceedings at that time to allow Mr. Caylor — who appeared remotely via Zoom, and without the benefit of being in the courtroom to consult with counsel — to confer with his attorneys. Instead, the parties sped through the truncated sentencing hearing and, when Mr. Caylor asked if he could make a statement, the court told him he could do so at his *Spencer* hearing.

To determine whether Mr. Caylor's waivers were constitutionally enforceable, the Florida Supreme Court should have considered all the relevant circumstances surrounding the waivers, with particular focus on Mr. Caylor's knowledge at the time, to determine whether he was, among other factors that would render a waiver invalid, relying on a misrepresentation regarding an unfulfillable promise.

The Florida Supreme Court's reliance on *Ruiz* was misplaced, where Mr. Caylor's reason for waiving his constitutional rights was based on a moot, void, or unattainable promise before the waiver even took place. Although *Ruiz* allows for the scenario where a defendant is operating under "some misapprehension" as long as the defendant understands the nature of the rights he is waiving, 536 U.S. at 629, the allowable misapprehensions this Court contemplated in *Ruiz* are qualitatively different from specific knowledge of an already-existing fact that would make the goal of a waiver unattainable. Those allowable misapprehensions instead concern intricacies of what might happen at a future trial or on appeal, such as the strength of the State's case at trial, probable penalties, an unanticipated change in the law, the effect of a potential defense, or a potential constitutional

challenge to grand jury proceedings. *See Ruiz*, 539 U.S. at 630-31. In each of those instances it may well be that a plea can be "knowing" without "complete knowledge of the relevant circumstances," *see id*, at 630-31, but those misapprehensions are distinct from the instant case where the Mr. Caylor was operating under a lack of knowledge of a specific, factual event that had already occurred and made it impossible to realize the hoped-for benefit of entering a waiver.

Unlike the scenarios in *Ruiz*, Ms. McNalin's death in this case did not affect the proof the State put on during the penalty phase or alter the course or conduct of the penalty phase itself, and its effect was not random or variable. Rather, her death — which was a historical fact, not a contingent future event — made it impossible for Mr. Caylor to realize the benefit for which he was waiving his constitutional rights.

Moreover, the Florida Supreme Court's determination that the defendant's "internal motivations" and "ignorance" do not go to his understanding — or lack thereof — of his constitutional rights, plainly conflicts with this Court's mandate under *Brady* to consider all the relevant circumstances, focusing on the defendant's knowledge at the time of the waiver.

The Florida Supreme Court unnecessarily and improperly limited consideration of the totality of the circumstances surrounding Mr. Caylor's waivers. Although Mr. Caylor was aware that the direct consequences of his waivers were that he would not have a jury sentencing determination based on a full presentation of mitigation, his waivers were induced by an unfulfillable promise: that he was

doing something to benefit the victim's mother. There was no other possible benefit to Mr. Caylor; he was facing a death sentence either way. This rendered his waivers involuntary and unknowing.

This Court should grant the petition to address the question of whether the court's denial of Mr. Caylor's motion to withdraw his waivers comported with the constitutional protections of the Sixth, Eighth, and Fourteenth Amendments. At the time of his resentencing, Mr. Caylor would have needed to convince only *one* juror that the mitigating circumstances justified a life sentence in order to avoid a death sentence. Had Mr. Caylor been allowed to present a mitigation case to a jury, it is reasonable to believe the outcome of his resentencing would have been different. This is evident from the original jury's 8 to 4 sentencing recommendation at the 2009 penalty phase trial. Not only would a second jury have had the benefit of considering the evidence presented at his original trial, it also would have had the benefit, at a minimum, of the additional evidence presented at Mr. Caylor's second *Spencer* hearing.

Accordingly, Mr. Caylor's petition should be granted to address whether the Florida Supreme Court unconstitutionally obstructed his fundamental rights.

II. The Florida Supreme Court's Decision Directly Conflicts With This Court's Decisions on the Standard of Proof for Functional Elements of an Offense and Violates Mr. Caylor's Right to Due Process.

The Florida Supreme Court's decision conflicts with the principle that any fact that "expose[s] the defendant to a greater punishment than that authorized by the jury verdict" is functionally an element of the offense, which the State must prove beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 494 n.19 (2000). In *Ring v. Arizona*, 536 U.S. 584, 605 (2002), this Court stated the finding of aggravating circumstances under Arizona's capital sentencing scheme was the "functional equivalent" of an element of a greater offense, stating that "the characterization of a fact or circumstance as an 'element' or a 'sentencing factor' is not determinative." Because that finding exposed defendants to a sentence of death, which exceeded the statutory maximum under Arizona law, it had to be made by a jury. *Id.* Under the capital sentencing scheme in place at the time Mr. Caylor was resentenced, the determination as to whether the aggravating factors are sufficient to justify imposing death is the functional equivalent of an element because it exposes a defendant to a greater punishment than that authorized by statute for capital murder.

A murder with premeditation is a first-degree murder under Florida law, classified as a capital felony. Fla. Stat. § 782.04(1)(a)1 (2022). A person who is convicted of a capital felony can be punished by death "if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a

determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole." Fla. Stat. § 775.082(1)(a) (2022). Before the sentencer uses whatever discretion it has to select the appropriate sentence, the sentencing scheme requires the jury (or judge, in a bench trial) to make three determinations: that at least one aggravating factor exists, that the aggravating factor or factors are "sufficient," and that the aggravating factor or factors outweigh the mitigating circumstances. Fla. Stat. § 921.141 (2) (2022).

Until each of those preliminary determinations is made, even though premeditated murder is labeled a "capital felony," the death penalty is not available. *See id.* The actual selection of the death penalty or a penalty of life in prison takes place separately under Fla. Stat. § 921.141 (3). The determinations that one or more aggravating factors have been proved, that aggravating factors are sufficient to justify death, and that they outweigh the mitigating evidence are the findings that increase the potential sentence from life in prison to death.

In *Apprendi*, this Court held that any circumstance that increases a sentence "beyond the maximum authorized statutory sentence…is the functional equivalent of an element of a greater offense than the one covered by the jury's guilty verdict." 530 U.S. at 494 n.19. *See also Blakely v. Washington*, 542 U.S. 296, 302-05 (2004) (applying *Apprendi* to reverse a sentence that exceeded the standard sentencing range for a particular offense, even though the sentence did not exceed the overall

statutory maximum for that class of offenses); *Alleyne v. United States*, 570 U.S. 99 (2013) (applying *Apprendi* to factors increasing mandatory minimum sentences).

This Court applied these principles in *Hurst v. Florida*, 577 U.S. 92 (2016), holding unconstitutional a previous Florida capital sentencing scheme that allowed a death sentence to be imposed without submitting all necessary findings to a jury. The Court's opinion began with the principle that "[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough." *Id.* at 94. Under the sentencing statute in effect at the time, imposing a death sentence required a separate sentencing proceeding leading to an "advisory sentence" from the jury, which was not required to give a factual basis for its recommendation. *See id.* at 95-96. Then, "[n]otwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, [was required to] enter a sentence of life imprisonment or death." *Id.* (citing § 921.141(3), Fla. Stat. (2010)).

This Court concluded that Hurst's death sentence violated the Sixth Amendment because the statutory scheme at issue did not "require the jury to make the critical findings necessary to impose the death penalty." *Id.* at 98. The Court pointed out that the statute did not make a defendant eligible for death until those findings were made. *Id.*

The Florida Legislature rewrote the state's capital sentencing scheme following *Hurst v. Florida*. Although the Florida Supreme Court initially interpreted the revised statute consistently with the *Apprendi* line of cases,

subsequent decisions have created conflict between Florida law and this Court's precedent. *Compare Hurst v. State*, 202 So. 3d 40, 44 (Fla. 2016) and *Perry v. State*, 210 So. 3d 630, 640 (Fla. 2016) (holding that, before a death sentence could be imposed, a jury must find unanimously and beyond a reasonable doubt the existence of aggravators, the sufficiency of the aggravators, and whether the aggravators outweighed the mitigation) *with Rogers v. State*, 285 So. 3d 872, 885-86 (Fla. 2019), *cert. denied*, 141 S. Ct. 284 (2020) and *State v. Poole*, 297 So. 3d 487, 490 (Fla. 2020), *cert. denied*, 141 S. Ct. 1051 (2021) (receding from *Hurst* and *Perry*). The requirement of "sufficient" aggravating circumstances in the statute under which Mr. Caylor was sentenced is separate from the mere existence of any of the enumerated aggravating circumstances.

This Court has stated that "channeling and limiting of the sentencer's discretion is imposing the death penalty is a fundamental constitutional requirement for sufficiently minimizing the risk of wholly arbitrary and capricious action." *Maynard v. Cartwright*, 486 U.S. 356, 362 (1988). This requires meaningful narrowing of the class of individuals subject to capital punishment. *See, e.g.*, *McCleskey v. Kemp*, 481 U.S. 279, 303 (1987) ("a State must 'narrow the class of murderers subject to capital punishment' by providing 'specific and detailed guidance' to the sentencer.") (citations omitted). An aggravating circumstance making a defendant eligible for the death penalty "must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of

murder." *Zant v. Stephens*, 462 U.S. 862, 877 (1983). An aggravating circumstance is constitutionally deficient when it does not provide a "principled way" to distinguish cases in which death is an appropriate penalty from those in which it is not. *Godfrey v. Georgia*, 446 U.S. 420, 428, 433 (1980) (holding nothing in the phrase "outrageously or wantonly vile, horrible and inhuman" implied "any inherent restraint on the arbitrary and capricious infliction of the death sentence").

When Florida's first post-Furman sentencing statute was enacted, it included eight statutory aggravating factors. *See State v. Dixon*, 283 So. 2d 1, 10 (Fla. 1973). When Mr. Caylor was sentenced, Florida's scheme contained 16 aggravating factors. Fla Stat. § 921.141(6)(a)-(p) (2022). More have since been added.[4]

Given the number and breadth of the statutory aggravators in Florida's death penalty statute, *see, e.g.*, *Espinosa v. Florida*, 505 U.S. 1079, 1081 (1992), it is impossible to say they "channel the sentencer's discretion by clear and objective standards" as required by, inter alia, *Godfrey*, 446 U.S. at 428. In 2013, a commentator noted that nearly all first-degree murder cases were death-eligible. *See generally* Stephen K. Harper, *The False Promise of Proffitt*, 67 U. Miami L. Rev. 413, 417-23 (2013). For a brief time after Florida's capital sentencing statute was revised in light of this Court's decision in *Hurst v. Florida*, 577 U.S. 92 (2016), when the Florida Supreme Court interpreted the sentencing statute to require a finding of

[4] In 2023, the Florida Legislature added two non-homicide offenses to the list of offenses for which a death sentence can be imposed. *See* Fla. Stat. § 921.1425 (2023) ("Sentence of death or life imprisonment for capital sexual battery); Fla. Stat. § 921.142 (2023) ("Sentence of death or life imprisonment for capital drug trafficking felonies").

"sufficient" aggravating circumstances beyond a reasonable doubt, the sufficiency element provided a narrowing function. *See Hurst v. State*, 202 So. 3d 40, 57-58 (Fla. 2016). That is no longer the case.[5]

In holding that the determinations that are currently required before Florida defendants can be subjected to a death penalty are not the elements (or the functional equivalent of elements) requiring a verdict based on proof beyond a reasonable doubt, Florida law directly conflicts with this Court's decisions in *Apprendi*, *Ring*, *Alleyne*, and *Hurst v. Florida*. Mr. Caylor's death sentence is constitutionally deficient under the Sixth, and Fourteenth Amendments to the Constitution. U.S. Const. amend. VI; U.S. Const. amend. XIV.

[5] Since receding from *Hurst* and *Perry*, the Florida Supreme Court has repeatedly held that determinations as to whether aggravating factors are sufficient to justify the death penalty and whether the aggravating factors outweigh mitigating evidence "are not subject to the beyond a reasonable doubt standard of proof." *Newberry v. State*, 288 So. 3d 1040, 1047 (Fla. 2019), *cert. denied*, 141 S. Ct. 625 (2020); *see also, e.g.*, *Bright v. State*, 299 So. 3d 985, 998 (Fla. 2020), *cert. denied*, 141 S. Ct. 1697 (2021); *Santiago-Gonzalez v. State*, 301 So. 3d 157, 177 (Fla. 2020), *cert. denied*, 141 S. Ct. 2828 (2021); *Craven v. State*, 310 So. 3d 891, 902 (Fla. 2020), *cert. denied*, 142 S. Ct. 199 (2021);); *Wells v. State*, 364 So. 3d 1005, 1014 (Fla.), *cert. denied*, 144 S. Ct. 385 (2023).

CONCLUSION

The Florida Supreme Court's decision affirming Mr. Caylor's death sentence obstructs the exercise of fundamental rights obtained in the absence of a defendant's knowing and intelligent waiver. In addition, Florida's capital sentencing scheme fails to satisfy both Sixth and Eighth Amendment standards because, as interpreted by the Florida Supreme Court, it allows a death sentence to be imposed based on findings that are not subject to proof beyond a reasonable doubt. Because the issues here bear on important constitutional questions regarding the right to a jury trial and consideration of mitigating evidence, as well as the constitutionality of Florida's capital sentencing scheme, this petition should be granted and the decision vacated.

Respectfully submitted,

JESSICA J. YEARY
Public Defender
/s/ Barbara J. Busharis
BARBARA J. BUSHARIS*
Assistant Public Defender
*Counsel of Record for Petitioner

SECOND JUDICIAL CIRCUIT OF FLORIDA
OFFICE OF PUBLIC DEFENDER
301 South Monroe Street, Ste. 401
Tallahassee, Florida 32301
(850) 606-1000
barbara.busharis@flpd2.com

July 16, 2025