

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GLYNN T. MURPHY,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida First District Court of Appeal**

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether the Petitioner’s sentence violates his Sixth Amendment right to a jury trial when the trial court imposed a minimum mandatory sentence of fifteen years’ imprisonment based on *the trial court’s* finding that the Petitioner is a prison releasee reoffender (i.e., the trial court made a factual finding that the Petitioner’s burglary offense was committed within three years of the date that he was released from prison) – a conclusion that was not found beyond a reasonable doubt by *the jury*.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

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The Petitioner, GLYNN T. MURPHY, requests the Court to issue a writ of certiorari to review the opinion/judgment of the Florida First District Court of Appeal entered in this case on October 11, 2017. (A-1).¹

D. CITATION TO ORDER BELOW

Murphy v. State, 227 So. 3d 242 (Fla. 1st DCA 2017).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal rendered on October 11, 2017.

F. CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury”

Section 775.082(9), Florida Statutes, states in relevant part:

(a)1. “Prison releasee reoffender” means any defendant who commits, or attempts to commit:

. . . .

q. Burglary of a dwelling or burglary of an occupied structure;

. . . .

¹ References to the appendix to this petition will be made by the designation “A” followed by the appropriate page number.

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

....

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

....

c. For a felony of the second degree, by a term of imprisonment of 15 years[.]

....

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

G. STATEMENT OF THE CASE

In 2014, the Petitioner was convicted following a jury trial of burglary of a dwelling (a second-degree felony). *See* § 810.02(3), Fla. Stat. At the sentencing hearing, the trial court sentenced the Petitioner to a mandatory sentence of fifteen years' imprisonment, finding that the Petitioner is a prison releasee reoffender pursuant to section 775.082(9), Florida Statutes). (A-7). On direct appeal (and in a post-trial motion pursuant to Florida Rule of Criminal Procedure 3.800(b)), the Petitioner argued that his prison releasee reoffender sentence violates his Sixth Amendment right to a jury trial. The Florida First District Court of Appeal affirmed the sentence, stating:

We affirm in all other respects, and reject, as we have before, the argument that a prison releasee reoffender sentence is unconstitutional if a jury did not make the finding that the defendant was released within the previous three years. *See Williams v. State*, 143 So. 3d 423, 424 (Fla. 1st DCA 2014).

(A-2).

H. REASON FOR GRANTING THE WRIT

The question presented is important and has a potential impact on numerous criminal prosecutions nationwide.

This case provides the Court with an opportunity to decide whether the Sixth Amendment right to a jury trial is implicated when the *timing* of a defendant's previous conviction is a necessary element of a sentencing enhancement. In the instant case, the Petitioner's sentence was increased due to facts/elements not charged in the information nor proven beyond a reasonable doubt to the jury. The information is silent regarding (1) any prior felonies for which the Petitioner was convicted and/or (2) the date on which the Petitioner was previously released from prison. (A-13). The jury was never asked to determine whether the Petitioner had previously been convicted of a felony, and specifically, whether the Petitioner committed the instant offense within three years after being released from prison. The Petitioner's sentence was severely increased due to the trial court's finding that he is a prison releasee reoffender (he was sentenced to a mandatory minimum sentence of fifteen years' imprisonment with no possibility of gain time). *See* § 775.082(9)(b), Fla. Stat.² Accordingly, the Petitioner submits that his sentence violates his Sixth Amendment right to a jury trial.

In *Alleyne v. United States*, 570 U.S. 99, –, 133 S. Ct. 2151, 2163 (2013), the

² But for the imposition of the minimum mandatory prison releasee reoffender sentences, the Petitioner would have been sentenced pursuant to the Florida Criminal Punishment Code (and the trial court would have been afforded discretion to impose a sentence of less than fifteen years' imprisonment).

Court held that “facts that increase mandatory minimum sentences must be submitted to the jury” and established “beyond a reasonable doubt.” In the instant case, the issue of whether the Petitioner is a prison releasee reoffender was not submitted to the jury nor found beyond a reasonable doubt (i.e., the trial court – not the jury – made the factual finding that the Petitioner was a prison releasee reoffender).

The Petitioner is aware that under the current law, there is a “prior conviction exception” to the Sixth Amendment right to a jury trial (i.e., when a sentencing enhancement is based solely on the existence of a “prior conviction,” the existence of the prior conviction need not be found beyond a reasonable doubt by the jury). *See Almendarez-Torres v. United States*, 523 U.S. 224 (1997). However, in order to find that a defendant is a prison releasee reoffender, more is required than just establishing the “prior conviction.” In addition to establishing the “prior conviction,” a factual determination must be made as to whether the sentencing offense was committed *within three years of the defendant’s release from prison*. *See* § 775.082(9)(a), Fla. Stat. In the instant case, this determination was made using the preponderance of the evidence standard (as opposed to the beyond a reasonable doubt standard). Pursuant to *Alleyne*, this factual finding as to whether the sentencing offense was committed within three years of the Petitioner’s release from prison should have been submitted to the jury and found beyond a reasonable doubt. *See Alleyne*, 570 U.S. at –, 133 S. Ct. at 2163 (“facts that increase mandatory minimum sentences must be submitted to the jury” and established “beyond a reasonable doubt”).

The Petitioner notes that the Ninth Circuit Court of Appeals has held that the Sixth Amendment right to a jury trial is implicated when the *timing* of a defendant's previous conviction is a necessary element of a sentencing enhancement. In *United States v. Salazar-Lopez*, 506 F.3d 748 (9th Cir. 2007), the Ninth Circuit considered 8 U.S.C. § 1326(b)(1), which provides for a sentencing enhancement if a defendant is an alien who has been removed from the United States *following a felony conviction*. The Ninth Circuit held that the timing of the defendant's previous conviction was a "fact other than a prior conviction":

[T]he temporal relationship between Salazar-Lopez's removal and his previous conviction was a fact that increased the maximum sentence that he faced. As such, the date of the removal, or at least the fact that Salazar-Lopez had been removed after his conviction, should have been alleged in the indictment and proved to the jury.

Salazar-Lopez, 506 F.3d at 752. Similarly, in light of the prison releasee reoffender enhancement in the instant case, the temporal relationship of the instant offense and the Petitioner's previous release from prison was a "fact other than a prior conviction." In order to establish that the Petitioner qualified as a prison releasee reoffender, the prosecution was required to establish that the Petitioner was released from prison within three years from the date of the alleged offense in the instant case. See § 775.082(9)(a)1., Fla. Stat. Pursuant to *Salazar-Lopez*, the prosecution was required to prove the Petitioner's prison release date to the jury. Because this alleged "fact" was not found beyond a reasonable doubt by the jury, the imposition of the minimum mandatory prison releasee reoffender sentence in this case violates the Petitioner's

Sixth Amendment rights.

The question presented in this case is ripe for consideration by the Court. By granting this petition for writ of certiorari, the Court will have the opportunity to consider this important question.

I. CONCLUSION

The Petitioner requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

/s/ Michael Ufferman

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