

CASE NO. 17-9401
IN THE SUPREME COURT OF THE UNITED STATES

KENNETH DARCELL QUINCE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI TO THE FLORIDA SUPREME COURT**

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QUESTIONS PRESENTED FOR REVIEW

[Capital Case]

Certiorari review should be denied because (1) the Florida Supreme Court's ruling on the retroactivity of *Hurst v. Florida* and *Hurst v. State*, which relied on state law to provide that the *Hurst* cases are not retroactive to defendants whose death sentences were final when this Court decided *Ring v. Arizona*, does not violate Due Process or the Sixth Amendment; (2) the Florida Supreme Court's failure to give full retroactive effect to the *Hurst* decisions does not violate Equal Protection or the Eighth Amendment; (3) the Florida Supreme Court's ruling that a valid waiver of a penalty phase jury is also an effective waiver of any right to relief under *Hurst v. State* does not violate the Fifth, Sixth, Eighth, or the Fourteenth Amendments, and (4) the Florida Supreme Court's decision does not conflict with any decision of this Court or involve an important, unsettled question of federal law.

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CITATION TO OPINION BELOW

The decision of the Florida Supreme Court is reported at *Quince v. State*, 233 So. 3d 1017 (Fla. 2018). (Pet. App. A).

STATEMENT OF JURISDICTION

The judgment of the Florida Supreme Court was entered on January 18, 2018. This Court's jurisdiction to review the final judgment of the Florida Supreme Court is authorized by 28 U.S.C. § 1257 (a). However, because the Florida Supreme Court's decision in this case is based on adequate and independent state grounds, this Court should decline to exercise jurisdiction as no federal question is raised. Sup. Ct. R. 14(g) (i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

STATEMENT OF THE CASE

In December 1979, the body of an eighty-two-year-old woman dressed in a bloodstained nightgown was found lying on the floor of her bedroom. She had bruises on her forearm and under her ear, a small abrasion on her pelvis, and lacerations on her head, which were severe enough to cause death. She was sexually assaulted while alive, but the medical examiner could not determine

whether the victim was conscious or unconscious during the battery. Strangulation was the cause of death. *Quince v. State*, 414 So. 2d 185, 186, (Fla. 1982).

Based upon a fingerprint identification, Quince was arrested. Although he initially denied knowledge of the incident, he later confessed to the burglary. He also admitted to stepping on the victim's stomach before leaving her house. A month later, when faced with laboratory test results, he admitted that he sexually assaulted the deceased. The grand jury returned an indictment charging the Quince with first-degree murder, burglary, and sexual battery. *Id.* at 186. The sexual battery was later dismissed because it was the underlying felony of the felony murder offense. *Id.* at 186, n.1. After plea negotiations, Quince waived the right to a sentencing jury. *Id.* Immediately preceding the plea colloquy, the trial court spoke with Quince regarding the ramifications of Quince's decision to waive his right to a sentencing jury. (Pet. App. D). During the plea colloquy, the trial court again inquired of Quince as to whether he understood that he had the right to have a jury render a recommendation as to the appropriate sentence, and whether Quince fully understood that he was agreeing to waive his right to a sentencing jury. (Pet App. D, P. 8-9). Quince advised that he understood the nature of the right that he was giving up, that he was not forced or coerced into waiving a sentencing jury, and was aware that the State would advocate that he be sentenced to death. (Pet.

App. D, P. 9). Quince also advised the court that he was not mentally or emotionally disabled. (Pet. App. D, P. 11).

After hearing and weighing evidence, the trial court found the existence of three aggravating circumstances: 1) the murder was committed during the commission of a sexual battery; 2) the murder was committed for pecuniary gain, and 3) the murder was heinous, atrocious and cruel. *Id.* The only mitigating circumstance found by the trial court dealt with Quince's inability to appreciate the criminality of his conduct, but due to conflicting evidence, the trial court assigned little weight to the mitigating circumstance. *Id.* The trial judge sentenced Quince to death. *Id.*

On appeal, the Florida Supreme Court affirmed Quince's death sentence. *Id.* at 189. Quince's sentence became final on October 4, 1982, when this Court denied Quince's petition for a writ of certiorari. *Quince v. Florida*, 459 U.S. 895 (1982).

Quince continued to seek relief from his conviction and sentence through postconviction litigation. *Quince v. State*, 477 So. 2d 535 (Fla. 1985) (affirming denial of postconviction relief); *Quince v. State*, 592 So. 2d 669 (Fla. 1992) (remanding for evidentiary hearing on claim alleging trial counsel conflict of interest); *Quince v. State*, 732 So. 2d 1059, 1060 (Fla. 1999) (affirming denial of conflict of interest claim following remand); *Quince v. State*, 116 So. 3d 1262

(Fla. 2012) (table), *cert. denied*, 134 S. Ct. 2695 (2014) (affirming denial of Quince’s intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002), and section 921.137, Florida Statutes (2003); and *Quince v. State*, 241 So. 3d 58 (Fla. 2018) (affirming denial of Quince’s renewed motion for determination of intellectual ability as a bar to execution).

On January 9, 2017, Quince filed a successive postconviction motion in which he sought relief pursuant to *Hurst v. Florida*, 136 S.Ct. 616 (2016), as interpreted in *Hurst v. State*, 202 So. 3d 40 (2016), *cert. denied*, 137 S.Ct. 2161 (2017). After the postconviction court denied relief, (Pet. App. C), the Florida Supreme Court ordered the parties to file briefs addressing why the lower court’s order should not be affirmed based on the court’s precedent in *Mullens v. State*, 197 So. 3d 16 (Fla. 2016), *cert. denied* 137 S.Ct. 672 (2017). (Pet. App. B).

In *Mullens*, the Florida Supreme Court concluded:

“... Mullens knowingly, intelligently, and voluntarily pleaded guilty to the charged offenses. Additionally, Mullens is not entitled to relief on any of the errors that he alleges. We also determine that Mullens is not entitled to relief pursuant to *Hurst*. ”

Mullens v. State, 197 So. 3d 16, 40 (Fla. 2016), *reh'g denied*, 2016 WL 4377112 (Fla. Aug. 9, 2016), and *cert. denied sub nom.*, *Mullens v. Florida*, 137 S. Ct. 672 (2017).

The Florida Supreme Court ultimately affirmed the lower court’s denial of

relief, finding:

In *Mullens*, we held that a defendant “cannot subvert the right to jury factfinding by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence.” 197 So. 3d at 40. We have since consistently relied on *Mullens* to deny *Hurst* relief to defendants who waived a penalty phase jury. *E.g.*, *Covington v. State*, 228 So. 3d 49, 69 (Fla. 2017); *Knight v. State*, 211 So. 3d 1, 5 n.2 (Fla. 2016); *Robertson v. State*, No. SC16-1297, 2016 WL 7043020, at *1 n.1 (Fla. Dec. 1, 2016) (unpublished); *Davis v. State*, 207 So. 3d 177, 212 (Fla. 2016), *cert. denied*, — U.S. —, 137 S.Ct. 2218, 198 L.Ed.2d 663 (2017); *Brant v. State*, 197 So. 3d 1051, 1079 (Fla. 2016). Quince made a valid waiver of his right to a penalty phase jury, and his arguments here do not compel a departure from our precedent. Accordingly, because Quince waived his right to a penalty phase jury, he is not entitled to *Hurst* relief.

Moreover, because Quince's sentence became final nearly twenty years before *Ring* was decided, his *Hurst* claim is also foreclosed by our decision in *Asay*. See *Hitchcock v. State*, 226 So. 3d 216, 217 (Fla.), *cert. denied*, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017); *Asay*, 210 So. 3d at 22; see also *Lambrix v. State*, 227 So. 3d 112, 113 (Fla.) (rejecting argument that the Eighth Amendment, equal protection, and due process require that *Hurst* be applied retroactively to defendant whose sentences were final prior to *Ring*), *cert. denied*, — U.S. —, 138 S.Ct. 312, 199 L.Ed.2d 202 (2017). We therefore affirm the trial court's order denying Quince's successive motion for postconviction relief.

Quince v. State, 233 So. 3d 1017, 1018 (Fla. 2018). (Pet. App. A).

Quince now seeks certiorari review of the Florida Supreme Court's decision.

REASONS FOR DENYING THE WRIT

Certiorari review should be denied because (1) the Florida Supreme Court's ruling on the retroactivity of *Hurst v. Florida* and *Hurst v. State*, which relied on state law to provide that the *Hurst* cases are not retroactive to defendants whose death

sentences were final when this Court decided *Ring v. Arizona*, does not violate Due Process or the Sixth Amendment; (2) the Florida Supreme Court's failure to give full retroactive effect to the *Hurst* decisions does not violate Equal Protection or the Eighth Amendment; (3) the Florida Supreme Court's ruling that a valid waiver of a penalty phase jury is also an effective waiver of any right to relief under *Hurst v. State* does not violate the Fifth, Sixth, Eighth, or the Fourteenth Amendments, and (4) the Florida Supreme Court's decision does not conflict with any decision of this Court or involve an important, unsettled question of federal law.

Quince requests this Court review the Florida Supreme Court's decision affirming the denial of his successive postconviction motion, arguing that the state court's holding with respect to retroactivity violates the Sixth and Fourteenth Amendments. The Petition further alleges that the Florida Supreme Court's refusal to retroactively apply *Hurst* to pre-*Ring* cases is in violation of the Eighth Amendment's prohibition against arbitrary and capricious imposition of the death penalty and the Fourteenth Amendment's guarantee of equal protection. Finally, Quince asserts that he is entitled to relief under *Hurst*, despite voluntarily waiving his right to a jury sentencing recommendation.

As argued *infra*, nothing about the process employed by the Florida Supreme Court was inconsistent with the Constitution. Quince does not provide any "compelling" reason for this Court to review his case. U.S. Sup. Ct. R. 10. Indeed, Quince cannot cite to any decision from this or any appellate court that conflicts with the Florida Supreme Court's decision in *Quince v. State*, 233 So. 3d

1017, 1018 (Fla. 2018), in which the court determined that Quince was not entitled to relief under *Hurst v. State* because (1) his valid waiver of a penalty phase jury also served as an effective waiver of any right to relief under *Hurst v. State*, and (2) under Florida Law *Hurst* was not retroactive to his death sentence which became final nearly twenty years before *Ring* was decided. The petition for writ of certiorari should be denied.

I. The Florida Court’s Ruling on Retroactivity Does Not Violate Due Process or the Sixth Amendment Right to a Jury Trial.

Quince requests this Court review the Florida Supreme Court’s decision affirming the denial of his successive postconviction motion, arguing that the state court’s holding with respect to retroactivity violates his Due Process and Sixth Amendment right to a jury trial. The primary purpose for which this Court uses its certiorari jurisdiction is to resolve conflicts among the United States courts of appeal and state courts “concerning the meaning and provisions of federal law.” *Braxton v. United States*, 500 U.S. 344, 348 (1991). Rule 10 of the Rules of the Supreme Court of the United States identifies the relevant considerations in determining the propriety of certiorari review. Noting review is only granted for “compelling reasons,” the Rule indicates consideration of a decision by a state court of last resort should involve an unresolved question of federal law or a conflict among higher courts. As will be shown, nothing about the Florida

Supreme Court's retroactivity decision is inconsistent with the United States Constitution. There is no federal constitutional question here and no reason for this Court to grant review. *See Braxton, Id.*

In *Hurst v. Florida*, 136 S. Ct. 616 (2016), this Court disallowed Florida's procedure permitting trial judges (as opposed to juries) to make the finding of an aggravating circumstance that renders the defendant eligible for a death sentence. In response, Florida adopted new procedural requirements that, among other things, mandated that all factual findings necessary to impose death be found by a unanimous jury. However, Florida was not required to grant retroactive application of *Hurst v. Florida* to all death sentenced murderers regardless of the date their convictions and sentences became final.

Under the Florida Supreme Court controlling precedent of *Asay v. State*, 210 So. 3d 1 (Fla. 2016), *cert. denied*, 138 S. Ct. 41 (2017), the court ruled that, as a matter of state law, *Hurst v. State* is not retroactive to any case in which the death sentence was final prior to the June 24, 2002, decision in *Ring v. Arizona*, 536 U.S. 584 (2002). *See also Mosley v. State*, 209 So. 3d 1248, 1272-73 (Fla. 2016) (holding that, as a matter of state law, *Hurst v. State* does apply retroactively to defendants whose sentences were not yet final when this Court issued *Ring*). Quince's sentence became final nearly twenty years before *Ring* was decided. That alone denies him any *Hurst* relief. Moreover, the Florida Supreme Court

subsequently held that the new procedure did not apply to all capital cases; specifically, it excluded them from applying to any capital defendant who, like Quince, waived his penalty phase jury. *Mullens v. State*, 197 So. 3d 16, 38-40 (Fla. 2016). For these two reasons, Quince foregoes any entitlement to a *Hurst* claim.

Despite the Florida Supreme Court's clear mandate, Quince suggests that the Florida court created a new substantive rule in *Hurst v. State* which must, pursuant to *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), be applied retroactively to all cases in which alleged *Hurst* error occurred. Quince's reliance on *Montgomery* for this proposition is misplaced. In *Montgomery*, Louisiana ruled that this Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), which held that a juvenile could not be sentenced to mandatory life in prison without the possibility of parole, did not apply retroactively. *Montgomery*, 136 S. Ct. at 727. This Court reversed Louisiana's holding because *Miller* "announced a substantive rule of constitutional law." *Id.* at 734. This Court reasoned that the rule was substantive, because it placed a punishment beyond the State's power to impose. Rephrased, *Miller* prevented the State from imposing a mandatory life sentence on juveniles. *Id.* The distinction between substantive rules and procedural rules is critical, because substantive rules apply retroactively regardless of when a conviction became final, while procedural rules do not. *Id.* at 729. Therefore, because *Miller* was a

substantive rule, *Miller* applied retroactively regardless as to when a defendant's conviction became final. *Id.*

The new rule announced in *Hurst v. Florida*, and expanded in *Hurst v. State*, allocated the authority regarding capital sentencing decisions from the judge to the jury. Unlike the ruling in *Montgomery*, the rulings in *Hurst v. Florida* and *Hurst v. State* were procedural, not substantive. See *Montgomery*, 136 S. Ct. at 730 (“Procedural rules . . . are designed to enhance the accuracy of a conviction or sentence by regulating ‘the *manner of determining* the defendant’s culpability.’”) (emphasis in original; quoting *Schriro*, 542 U.S. at 353). See also *Schriro*, 542 U.S. 348, 352 (2004) (“*Ring* announced a new procedural rule that does not apply retroactively to cases already final on direct review.”). In *Hurst* the same class of defendants committing the same range of conduct face the same punishment. Further, unlike the now unavailable penalty in *Miller*, the death penalty can still be imposed under the law after *Hurst*. Instead, *Hurst*, like *Ring*, merely “altered the range of permissible methods for determining whether a defendant’s conduct is punishable by death, requiring that a jury rather than a judge find the essential facts bearing on punishment.” *Summerlin*, 542 U.S. at 353.

Moreover, the decision in *Hurst v. Florida* is based on an entire line of jurisprudence which courts have almost universally held to not have retroactive application. See *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004) (holding that *Ring*

was not retroactive); *DeStefano v. Woods*, 392 U.S. 631 (1968) (*per curiam*) (holding the Court’s decision in *Duncan v. Louisiana*, 391 U.S. 145 (1968) which guaranteed the right to a jury trial to the States was not retroactive); *Varela v. United States*, 400 F.3d 864, 866–67 (11th Cir. 2005) (explaining that Supreme Court decisions, such as *Ring v. Arizona*, 536 U.S. 584 (2002), *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005) applying *Apprendi*’s “prototypical procedural rule” in various contexts are not retroactive); *McCoy v. United States*, 266 F.3d 1245, 1255, 1259 (11th Cir. 2001) (holding *Apprendi v. New Jersey*, 530 U.S. (2000) not retroactive under *Teague v. Lane*, 489 U.S. 288 (1989), and acknowledging that every federal circuit to consider the issue reached the same conclusion); *State v. Johnson*, 122 So. 3d 856, 865-66 (Fla. 2013) (holding *Blakely* not retroactive in Florida). Thus, the new constitutional rules enunciated in *Hurst* are procedural in nature only, and therefore not subject to retroactive application under federal law. Quince’s arguments do not identify any federal or state court conflict, and instead amount to his general disagreement with how Florida has elected to apply its own death penalty laws.

To the extent Quince’s petition suggests *Hurst v. Florida* now requires jury sentencing under federal law, no such holding exists. See *Ring*, 536 U.S. at 612 (Scalia, J., concurring) (“[T]oday’s judgment has nothing to do with jury sentencing. What today’s decision says is that the jury must find the existence of

the *fact* that an aggravating factor existed.”) (emphasis in original). A Florida jury’s decision regarding a death sentence was, and still remains, an advisory recommendation. *See Dugger v. Adams*, 489 U.S. 401 (1989). *See also* § 921.141(2)(c), Fla. Stat. (2017) (providing that “[i]f a unanimous jury determines that the defendant should be sentenced to death, the jury’s **recommendation** to the court shall be a sentence of death”) (emphasis added). No case from this Court has mandated jury sentencing in a capital case, and such a holding would require reading a mandate into the Constitution that is simply not there. There was no Sixth Amendment error in this case. In addition, the Florida Supreme Court has correctly held that *Hurst* does not apply to capital defendants like Quince who knowingly and validly waived the right to a penalty phase jury. Therefore, Quince fails to present a constitutional question which would warrant certiorari review.

The Florida Supreme Court’s holding in *Hurst v. State* followed this Court’s ruling in *Hurst v. Florida* in requiring that aggravating circumstances be found by a jury beyond a reasonable doubt before a death sentence may be imposed. The Florida court then expanded this Court’s ruling, requiring in addition that “before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh

the mitigating circumstances, and unanimously recommend a sentence of death.” *Hurst v. State*, 202 So. 3d at 57. *Hurst v. Florida* did not address the process of weighing the aggravating and mitigating circumstances or suggest that the jury must conduct the weighing process to satisfy the Sixth Amendment. In *Kansas v. Carr*, 136 S. Ct. 633 (2016), decided eight days after this Court issued *Hurst v. Florida*, this Court emphasized:

Whether mitigation exists, however, is largely a judgment call (or perhaps a value call); what one jury might consider mitigating another might not. And of course, the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy—the quality of which, as we know, is not strained. It would mean nothing, we think, to tell the jury that defendants must deserve mercy beyond a reasonable doubt, or must more-likely-than-not deserve it. . . . In the last analysis, jurors will accord mercy if they deem it appropriate, and withhold mercy if they do not, which is what our case law is designed to achieve.

Carr, 136 S. Ct. at 642.

The findings required by the Florida Supreme Court following remand in *Hurst v. State* involving the weighing and selection of a defendant’s sentence are not required by the Sixth Amendment. *See, e.g., McGirth v. State*, 209 So. 3d 1146, 1164 (Fla. 2017). Rather, *Hurst v. Florida* was a Sixth Amendment case which applied *Ring* to Florida’s sentencing scheme, reiterating that a jury, not a judge, must find the existence of an aggravating factor to make a defendant eligible for the death penalty. *Hurst v. Florida*, 136 S. Ct. at 624; *Harris v. Alabama*, 513 U.S. 504, 515 (1995) (holding that the Constitution does not prohibit the trial judge

from “impos[ing] a capital sentence”). Lower courts have almost uniformly held that a judge may perform the “weighing” of factors to arrive at an appropriate sentence without violating the Sixth Amendment.¹ The trial court in this instance found the existence of three aggravating circumstances: 1) the murder was committed during the commission of a sexual battery; 2) the murder was committed for pecuniary gain and 3) the murder was heinous, atrocious and cruel. The only mitigating circumstance found by the trial court dealt with Quince’s inability to appreciate the criminality of his conduct, but due to conflicting evidence, the trial court assigned little weight to the mitigating circumstance.

¹ *State v. Mason*, 2018 WL 1872180, *5-6 (Ohio, Apr. 18, 2018) (“Nearly every court that has considered the issue has held that the Sixth Amendment is applicable to only the fact-bound eligibility decision concerning an offender’s guilt of the principle offense and any aggravating circumstances” and that “weighing is not a factfinding process subject to the Sixth Amendment.”) (string citation omitted); *United States v. Sampson*, 486 F.3d 13, 32 (1st Cir. 2007) (“As other courts have recognized, the requisite weighing constitutes a process, not a fact to be found.”); *United States v. Purkey*, 428 F.3d 738, 750 (8th Cir. 2005) (characterizing the weighing process as “the lens through which the jury must focus the facts that it has found” to reach its individualized determination); *Waldrop v. Comm’r, Alabama Dept. of Corr.*, 2017 WL 4271115, *20 (11th Cir. Sept. 26, 2017) (unpublished) (rejecting *Hurst* claim and explaining “Alabama requires the existence of only one aggravating circumstance in order for a defendant to be death-eligible, and in Mr. Waldrop’s case the jury found the existence of a qualifying aggravator beyond a reasonable doubt when it returned its guilty verdict.”) (citation omitted); *State v. Gales*, 658 N.W.2d 604, 628-29 (Neb. 2003) (“[W]e do not read either *Apprendi* or *Ring* to require that the determination of mitigating circumstances, the balancing function, or proportionality review to be undertaken by a jury”).

Quince now seeks to benefit from *Hurst* although he previously abandoned his right to have a jury take part in the penalty phase. Quince should not be permitted to recapture a right that he knowingly waived. There is nothing inherently unreliable about judicial factual determinations. A significant part of the jury's responsibility is to ensure the fairness of the resulting process, rather than reliability of the verdict. See *Duncan v. Louisiana*, 391 U.S. 145, 155-156 (1968); *Singer v. United States*, 380 U.S. 24, 35 (1965). Significantly, even after this Court applied the Sixth Amendment right to jury trial to the states, the right was not granted retroactively as there was no question that the respective outcomes in criminal cases tried before the court were reliable. *Destefano v. Woods*, 392 U.S. 631 (1968). Indeed, if consistency is the goal on capital sentencing, this Court has indicated that judicial sentencing may yield more consistent results, perhaps because of judges' greater experience with analogous cases. *Proffitt v. Florida*, 428 U.S. 242, 252 (1976). It is not a foregone conclusion, therefore, that a defendant's sentence is less reliable merely because the sentencing procedure in effect at the time permitted the trial judge to make the sentencing decision.

The Constitution provides a right to **trial** by jury, not to **sentencing** by jury. Quince's death sentence is neither unfair nor unreliable because the judge imposed the sentence in accordance with the law existing at the time of his trial. Quince cannot establish that his sentencing procedure was less accurate than future

sentencing procedures employing the new standards announced in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). See *Hughes v. State*, 901 So. 2d 837, 844 (Fla. 2005) (holding that *Apprendi* is not retroactive and noting that “neither the accuracy of convictions nor of sentences imposed and final before *Apprendi* issued is seriously impugned”; *Rhoades v. State*, 233 P. 3d 61, 70-71 (2010) (holding that *Ring* is not retroactive after conducting its own independent *Teague* analysis and observing, as this Court did in *Summerlin*, that there is debate as to whether juries or judges are the better fact-finders and that it could not say “confidently” that judicial factfinding “seriously diminishes accuracy.”) Just like *Ring* did not enhance the fairness or efficiency of death penalty procedures, neither does *Hurst*. *Johnson v. State*, 904 So. 2d 400, 409 (Fla. 2005). As this Court has explained, “for every argument why juries are more accurate factfinders, there is another why they are less accurate.” *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004). Thus, because the accuracy of Quince’s death sentence is not at issue, fairness does not demand retroactive application of *Hurst*.

Finally, Quince maintains that fairness and uniformity require that *Hurst* be retroactively applied to all cases. Contrary to his argument, fairness does not provide a mechanism for vacating his death sentence. The fact that some capital defendants who did not waive jury penalty phase sentencing have benefited from *Hurst* is not relevant when Quince chose to waive a right that belongs to each

capital defendant, even after being told that he could not appeal the issue. What fairness calls for, is that the victim's family not be forced to endure another penalty phase proceeding simply because Quince has had a change of heart. *State v. Towery*, 64 P. 3d 828, 835-36 (2003) (“[c]onducting new sentencing hearings, many requiring witnesses no longer available, would impose a substantial and unjustified burden on Arizona’s administration of justice” and would be inconstant with the Court’s duty to protect victims’ rights under the Arizona Constitution). Thus, Quince’s fairness argument rings hollow against the interests of the State, which prosecuted him in good faith under the law existing at the time of his trial, the concept of finality, and the interests of the victims’ family members.

As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344,347 (1991); *see also* Sup. Ct. R. 10 (b) (listing conflict among state supreme courts as a consideration in the decision to grant review). The Florida Supreme Court’s determination of the retroactive application of *Hurst* under *Witt v. State*, 387 So. 2d 922 (Fla. 1980), is based on an independent state ground and is not violative of federal law or this Court’s precedent. *Hurst* did not announce a substantive change in the law and is not retroactive under federal law. Nothing in the petition justifies the exercise of this Court’s certiorari jurisdiction.

II. The Florida Supreme Court’s failure to give full retroactive effect to the Hurst decisions does not violate the Eighth or Fourteenth Amendment.

Quince argues that the Florida Supreme Court’s partial retroactive application of *Hurst v. Florida* as interpreted in *Hurst v. State* violates the Eighth Amendment and the Equal Protection Clause of the Fourteenth Amendment. This Court has held that, in general, a state court’s retroactivity determinations are a matter of state law, not federal constitutional law. *Danforth v. Minnesota*, 552 U.S. 264 (2008). State courts may fashion their own retroactivity tests, including partial retroactivity tests. Florida’s partial retroactive application of *Hurst v. State* is not constitutionally unsound and does not otherwise present a matter that merits the exercise of this Court’s certiorari jurisdiction.

The state retroactivity doctrine employed by the Florida Supreme Court did not violate federal retroactivity standards. The court’s expansion of *Hurst v. Florida* in *Hurst v. State* is applicable only to defendants in Florida, and, consequently, subject to retroactivity analysis under state law as set forth in *Witt v. State*, 387 So. 2d 922 (Fla.), *cert. denied*, 449 U.S. 1067 (1980). *See Asay*, 210 So. 3d at 15 (noting that Florida’s *Witt* analysis for retroactivity provides “more expansive retroactivity standards” than the federal standards articulated in *Teague v. Lane*, 489 U.S. 288 (1989) (emphasis in original; citation omitted)).

New rules of law such as the rule announced in *Hurst v. Florida* do not usually apply to cases that are final. See *Whorton v. Bockting*, 549 U.S. 406, 416 (2007) (explaining the normal rule of nonretroactivity and holding the decision in *Crawford v. Washington*, 541 U.S. 36 (2004), was not retroactive). When a constitutional rule is announced, its requirements apply to defendants whose convictions or sentences are pending on direct review or not otherwise final. *Griffith v. Kentucky*, 479 U.S. 314, 323 (1987). However, once a criminal conviction has been upheld on appeal, the application of a new rule of constitutional criminal procedure is limited. This Court has held that new rules of criminal procedure will apply retroactively only if they fit within one of two narrow exceptions. Those exceptions are: (1) a substantive rule that "places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe or if it prohibits a certain category of punishment for a class of defendants because of their status or offense"; and (2) a procedural rule which constitutes a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. *Teague v. Lane*, 489 U.S. 288, 310-13 (1989); *Penry v. Lynaugh*, 492 U.S. 302 (1989) (abrogated on other grounds by *Atkins v. Virginia*, 536 U.S. 304 (2002); *Butler v. McKellar*, 494 U.S. 407 (1990); *Saffle v. Parks*, 494 U.S. 484 (1990)). Moreover, certain matters are not retroactive at all.

In *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987), this Court held “that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending direct review or not yet final, with no exception for cases in which the new rule constitutes a ‘clear break’ with the past.” Under this “pipeline” concept, only those cases still pending direct review or not yet final would receive the benefit from alleged *Hurst* error. Retroactivity under *Griffith* depends on the date of the finality of the direct appeal. Under *Teague*, if a case is final on direct review, the defendant will not receive the benefit of the new rule unless one of the narrow exceptions announced in *Teague* applies. Again, finality is the critical date-based test under *Teague*.

What is more, if partial retroactivity violated the United States Constitution or this Court’s retroactivity jurisprudence, this Court would not have given partial retroactive effect to a change in the penal law in *Dorsey v. United States*, 567 U.S. 260 (2012). In *Dorsey*, this Court held that the Fair Sentencing Act was partially retroactive in that it would apply to those offenders who committed applicable offenses prior to the effective date of the act, but who were sentenced after that date. *Id.* at 273. *See United States v. Abney*, 812 F.3d 1079, 1097-98 (D.C. Cir. 2016) (noting that prior to the decision in *Dorsey*, this Court had not held a change in a criminal penalty to be partially retroactive).

Contrary to Quince's assertions, there is nothing about Florida's decision providing partial retroactivity to *Hurst v. Florida* and *Hurst v. State* that is contrary to this Court's retroactivity jurisprudence. This Court has held that "*Ring* announced a new **procedural rule** that does not apply retroactively to cases already final on direct review." *Schriro v. Summerlin*, 542 U.S. 384, 352 (2004) (emphasis added). Since this Court has expressly found that *Ring* was not retroactive, *Hurst v. Florida*, which applied *Ring* to invalidate Florida's statute, is also not retroactive. Thus, *Ring* and *Hurst* announced a procedural change, not a substantive one. There is no conflict among federal courts on this issue. See *Lambrix v. Sec'y, Fla. Dept. of Corr.*, 851 F.3d 1158, 1165, n.2 (11th Cir. 2017) (*Lambrix V*) ("under federal law *Hurst*, like *Ring*, is not retroactively applicable on collateral review"), *cert. denied*, *Lambrix v. Jones*, 138 S.Ct. 217 (2017) (No. 17-5153); *Ybarra v. Filson*, 869 F.3d 1016, 1032-33 (9th Cir. 2017) (denying permission to file a successive habeas petition raising a *Hurst v. Florida* claim concluding that *Hurst v. Florida* did not apply retroactively).

Quince additionally claims that he should receive *Hurst* relief in the name of fundamental fairness and due process. A violation of the Eighth Amendment as it relates to death sentencing schemes requires a showing of arbitrariness or capriciousness in the sentencing process. *Jones v. United States*, 527 U.S. 373, 381 (1999). Here, however, there is nothing in the Florida Supreme Court's decision

that shows an arbitrariness or capriciousness in violation of the Eighth Amendment in fashioning its retroactivity decision. In *Hurst v. State*, the Florida Supreme Court explained that the “requirement that a jury must unanimously recommend death in order to make a death sentence possible serves that narrowing function required by the Eighth Amendment even more significantly, and expresses the values of the community as they currently relate to imposition of death as a penalty.” *Hurst*, 202 So. 3d at 60. Again, this is an alteration in the procedure necessary to obtain a death sentence. Neither the range of conduct nor the class of persons has been altered. Florida’s death penalty sentencing scheme still applies to the same persons engaging in the same conduct.

Ultimately, what Quince appears to suggest is that any new development in the law should be applied to all cases. However, that is untenable. Inherent in the concept of non-retroactivity is that some defendants will get the benefit of a new development, while other defendants will not, depending on a date. Drawing a line between newer cases that will receive a benefit and older, final cases that will not receive a benefit is part of the landscape of retroactivity analysis. If it were not this way, cases would never be resolved. With every new development in the law, capital defendants would get a new trial or a new penalty phase. Given that litigation in capital cases can span decades, there would never be finality. This is

not arbitrary and capricious in violation of the Eighth Amendment; it is simply a fact inherent in any retroactivity analysis.

Quince's Equal Protection argument is equally unconvincing. It is based on the fatally flawed contention that the Florida Supreme Court's ruling discriminates between similarly situated individuals. The law is well-settled that the Equal Protection Clause prohibits disparity of treatment by a State between classes of individuals whose situations are debatably the same. *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 601 (2008). "Of course, most laws differentiate in some fashion between classes of persons." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Thus, "[t]he Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Id.*

However, Quince is not similarly situated with the defendants who are entitled to *Hurst* relief, because those defendants were sentenced to death under an unconstitutional sentencing scheme. At the time Quince's sentence became final, a defendant could, consistent with the Sixth Amendment, be sentenced to death based on a judge's factfinding alone. Hence, contrary to his proclamation, he is not similarly situated with "post-*Ring*" defendants, and thus his Equal Protection claim must fail. *See also Lambrix v. Sec'y, Fla. Dept. of Corr.*, 872 F.3d 1170 (11th Cir. 2017) (rejecting Lambrix's argument that this Court's retroactivity decisions

violate the Equal Protection Clause, because Lambrix, whose death sentence was final prior to *Ring*, was not similarly situated with the defendants who are entitled to *Hurst* relief.) What's more, unlike "post-*Ring*" defendants, Quince waived his right to a penalty phase jury, precluding any *Hurst* relief.

Moreover, a criminal defendant challenging the State's application of capital punishment must show intentional discrimination to prove an equal protection violation. *McCleskey v. Kemp*, 481 U.S. 279, 292 (1987). A "[d]iscriminatory purpose' . . . implies more than intent as violation or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* at 298. Clearly, Quince has failed to demonstrate how he himself is being treated differently from similarly situated defendants. See *Asay*, 210 So. 3d at 28 ("Asay does not demonstrate how he was treated differently from similarly situated defendants.")

The Florida court's partial retroactivity ruling was based on the date of the *Ring* decision, not based on a purposeful intent to deprive pre-*Ring* death sentenced defendants in general, and Quince in particular, relief under *Hurst v. State*. The Florida Supreme Court has been entirely consistent in denying *Hurst* relief to those defendants whose convictions and sentences were final when *Ring* was issued in 2002. Since *Asay*, the Florida Supreme Court has continued to apply *Hurst*

retroactively to all post-*Ring* cases and declined to apply *Hurst* retroactively to all pre-*Ring* cases. See, *Branch v. State*, 234 So. 3d 548 (Fla.), *cert. denied*, 138 S. Ct. 1164 (2018); *Hannon v. State*, 228 So. 3d 505 (Fla.), *cert. denied*, 138 S.Ct. 441 (2017); *Lambrix v. State*, 227 So. 3d 112 (Fla.), *cert. denied*, 138 S.Ct. 312 (2017); *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S.Ct. 513 (2017).

Irrespective of retroactivity, Quince’s waiver of the right to a jury penalty phase proceeding presents a bar to *Hurst* relief. Following *Mullens*, the Florida Supreme Court has repeatedly denied *Hurst* relief in cases involving the waiver of the penalty phase jury, **even to those defendants whose death sentences arose after *Ring***. See *Brant v. State*, 197 So. 3d 1051 (Fla. 2016); *Davis v. State*, 207 So. 3d 177 Fla. 2016); *Wright v. State*, 213 So. 3d 881 (Fla. 2016); *Knight v. State*, 211 So. 3d (Fla. 2016).

This Court has repeatedly recognized that where a state court judgment rests on non-federal grounds, where the non-federal grounds are an adequate basis for the ruling independent of the federal grounds, “our jurisdiction fails.” *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Michigan v. Long*, 463 U.S. 1032, 1038 (1983). See also, *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (reaffirming that this Court has no jurisdiction to review a state court decision on certiorari review unless a federal question was raised and decided in the state court below);

Street v. New York, 394 U.S. 576, 581-82 (1969) (same). If a state court’s decision is based on separate state law, this Court “of course, will not undertake to review the decision.” *Florida v. Powell*, 559 U.S. 50, 57 (2010).

Florida’s retroactivity analysis is a matter of state law. This fact alone militates against the grant of certiorari in this case. It should also be noted that this Court has repeatedly denied certiorari to review the Florida Supreme Court’s retroactivity decisions following the issuance of *Hurst v. State*. See, e.g., *Jones v. State*, 234 So. 3d 545 (Fla.), *cert. denied*, 2018 WL 1993786 (U.S. June 25, 2018); *Cole v. State*, 234 So. 3d 644 (Fla.), *cert. denied*, 2018 WL 1876873 (U.S. June 18, 2018); *Branch v. State*, 234 So. 3d 548 (Fla.), *cert. denied*, 138 S.Ct. 1164 (2018); *Zack v. State*, 228 So. 3d 41 (Fla. 2017); *cert. denied*, 2018 WL 1367892 (U.S. June 18, 2018); *Kaczmar v. State*, 228 So. 3d 1 (Fla. 2017), *cert. denied*, 138 S.Ct. 1973 (2018); *Asay v. State*, 210 So. 3d 1 (Fla. 2016), *cert. denied*, 138 S.Ct. 41 (2017); *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S.Ct. 513 (2017); *Lambrix v. State*, 227 So. 3d 112 (Fla.), *cert. denied*, 138 S.Ct. 312 (2017); *Hannon v. State*, 228 So. 3d 505 (Fla.), *cert. denied*, 138 S.Ct. 441 (2017).

There is no conflict between the Florida Supreme Court’s decision and this Court’s Sixth, Eighth or Fourteenth Amendment jurisprudence. Nor is there any conflict between the Florida Supreme Court’s decision and that of any other

federal appellate or state supreme court. Finally, there is no underlying constitutional error under the facts of this case. Certiorari review should be denied.

III. The Florida Supreme Court’s ruling that a valid waiver of a penalty phase jury is also an effective waiver of any right to relief under *Hurst v. State* does not violate the Fifth, Sixth, Eighth, or the Fourteenth Amendments.

No conflict or unsettled question of federal law is presented in Quince’s petition. Instead, he seeks certiorari review of the Florida Supreme Court’s fact-based determination regarding the validity of his knowing and voluntary waiver of a penalty phase jury. He asserts that his waiver was invalid because Florida has made procedural changes that did not exist at the time of his waiver. Specifically, Quince argues that his waiver was not knowing, voluntary, and intelligent because at the time of his waiver, the Sixth Amendment right to unanimous jury factfinding on aggravating circumstances did not exist in Florida and therefore he cannot have waived such “nonexistent” right. The Florida Supreme Court has determined, however, that the changes in question do not apply to a defendant who waived his right to jury fact-finding, a determination that does not rise to the level of a federal constitutional violation.

Despite his argument to the contrary, the Florida Supreme Court found Quince knowingly, voluntarily, and intelligently waived a penalty phase jury and Florida’s own precedent precluded a grant of relief. *Twilegar v. State*, 228 So. 3d 550 (Fla. 2017). See also *Mullens v. State*, 197 So. 3d 16, 38-40 (Fla. 2016), *cert.*

denied, 137 S.Ct. 672 (2017). Quince cites to *Halbert v. Michigan*, 545 U.S. 605 (2005) in support of his proposition that at the time he waived the penalty phase jury, he had no recognized Sixth Amendment right to binding jury findings that he could elect to forego. The decision in *Halbert* is inapplicable to his case. *Halbert* is distinguishable because it involved the prohibition of the appointment of counsel to indigent defendants who pleaded guilty or no contendere. This Court noted that when Halbert entered his plea, he had no recognized right to appointed counsel that he could elect to forgo. *Id.* at 623. The waiver in *Halbert* was an implicit waiver of appellate counsel that flowed from his plea rather than an explicit waiver to have a jury participate in sentencing as is the case with Quince, who emphatically did not want a jury penalty phase. Furthermore, Halbert was not informed that his plea would result in a complete denial of appointed appellate counsel whereas Quince was told by the trial court that his waiver would prevent him from appealing the issue. Quince was fully aware of what he was doing when he knowingly waived the right to have a jury take part in any of the sentencing procedure. The *Hurst* decision does not change the fact that Quince did not want a jury present for the penalty phase.

Moreover, as the dissent in *Halbert* points out, this Court's cryptic statement implying that rights that are "not recognized" cannot be waived "cannot possibly mean that only rights that have been explicitly and uniformly recognized by statute

or case law may be waived.” *Halbert*, 545 U.S. at 640 (Thomas, J. dissenting). Instead, defendants can and do waive rights whose existence is unsettled. *Id.*

Quince’s argument is premised on the notion that the “right” announced in *Hurst* is one that did not previously exist, as in *Halbert*. However, that is not the case, because Quince always possessed the right to have a jury render an advisory recommendation as to what the appropriate sentence should be in his case. See § 921.141(2), Fla. Stat. (1980) (requiring the jury to render an advisory sentence based upon whether sufficient aggravating circumstances exist to justify imposition of the death penalty). Thus, the right announced in *Hurst* was not a new right that did not previously exist. Instead, *Hurst* reflected a mere change in procedure, and held that a defendant could not be sentenced to death based upon a judge’s factfinding alone. See *Hurst*, 136 S.Ct. at 624 (holding Florida’s death sentencing scheme unconstitutional, because it allowed the judge alone to find the existence of an aggravating circumstance).

The right to jury fact-finding is waivable. *Blakely v. Washington*, 542 U.S. 296, 309 (2004). A defendant who waives a jury trial has waived his Sixth Amendment right to a jury trial, which is the basis for *Hurst v. Florida* and *Hurst v. State* in the first place. Cf. *Shepard v. United States*, 544 U.S. 13, 16 (2005) (noting that sentencing a defendant based on facts that the defendant assented to during the plea colloquy does not violate *Apprendi*). Quince waived all jury involvement—

constitutionally mandated or not—in determining his penalty. Even if for arguments sake, it was believed that Quince acted only because he did not know he was entitled to unanimity, this does not mandate a conclusion that his waiver was invalid. Subsequent changes in the law do not render a prior waiver invalid. As this Court has explained, a defendant who waives a proceeding or right does so under the current law, and those waivers remain valid regardless of later developments in the law. A defendant who voluntarily waives his Sixth Amendment right to jury trial is bound by his choice, even where his decision was made in reliance on a procedural rule later found to be unconstitutional. In *Brady v. United States*, 397 U.S. 742 (1970) the defendant was charged under a federal law (18 U.S.C. § 1201(a)) that authorized a death sentence if the jury recommended it. Because § 1201(a) gave the judge no authority to impose death in the absence of a jury’s specific findings, it naturally encouraged defendants to waive jury trial, and Brady did exactly that- he waived his Sixth Amendment right to a jury and entered a plea. One year later, after this Court struck down § 1201(a) as unconstitutional, Brady sought to withdraw his plea and argued that his waiver could not have been voluntary under the circumstances. This Court disagreed—the record showed that Brady might have had other, unrelated reasons for entering a waiver, and Brady’s voluntary waiver of a constitutional right was consistent with the law in effect at

the time. Such a plea, “does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise.” *Id.* at 757.

Similarly, in *McMann v. Richardson*, 397 U.S. 759, 773-74 (1970), the defendant argued that his plea was involuntary when a new decision regarding coerced confessions was issued by this Court. This Court rejected the argument that subsequent changes in the law rendered an earlier plea involuntary and explained that when a defendant waives his right to a jury trial “he does so under the law then existing.” *Id.* at 774. This Court observed that, regardless of whether a defendant might have “pleaded differently” had the later decided cases been the law at the time of the plea, “he is bound by his plea.” *Id.* This Court noted the damage that would be wrought on the finality of pleas if courts permitted later changes in the law to be a basis for claiming a plea was involuntary. *Id.* See also, *United States v. Ruiz*, 536 U.S. 622, 630 (2002) (stating that “the Constitution, in respect to a defendant’s awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor” including a defendant’s failure “to anticipate a change in the law regarding relevant punishments”).

The *Halbert* Court did not overrule *Brady*, *Richardson*, or *Ruiz*. Moreover, the waiver logic of *Halbert* does not apply to this case. *Halbert* involved a totally unknown right. The right to a jury at the penalty phase in Florida was not unknown at the time of the waiver. There was no doubt that a capital defendant in 2001 was entitled to a jury at the penalty phase under the explicit text of Florida’s death penalty statute. While *Hurst v. Florida* and *Hurst v. State* expanded those rights, the right to a jury existed prior to either decision. A defendant may not claim a waiver is “unknowing” based on future changes in the law under the Florida Supreme Court’s precedent. *Mullens*, 197 So. 3d at 16; *Rodgers v. State*, 242 So. 3d 276 (Fla. 2018) (holding that the *Hurst* decisions do not apply to defendants, like *Rodgers*, who waive a penalty phase jury). This Court has rejected it as well. *McMann v. Richardson*, 397 U.S. 759, 773-74 (1970).

Furthermore, voluntariness of the waiver is determined under the law and knowledge that exists at the time. Criminal defendants can waive their constitutional rights so long as they knowingly, intelligently, and voluntarily do so. *Iowa v. Tovar*, 541 U.S. 77, 78 (2004). It is enough that an individual understands the waived right “in general . . . even though the defendant may not know the specific detailed consequences of invoking it.” *Tovar*, 541 U.S. at 92. To escape the consequence of waiving one’s constitutional rights there must be affirmative indications that, under the relevant circumstances, the waiver was unknowing or

involuntary. *United States v. Mezzanatto*, 513 U.S. 196, 209 (1995). In this case, prior to the plea colloquy, the trial court spoke with Quince regarding the ramifications of his decision to waive his right to a sentencing jury. During the plea colloquy, the trial court again questioned Quince as to whether he understood that he had the right to have a jury render a recommendation as to what sentence should be imposed, and whether Quince fully understood that he was agreeing to waive his right to a sentencing jury. Quince advised that he understood the nature of the right that he was giving up, that he was not forced or coerced into waiving a sentencing jury, and was aware that the State would advocate that he be sentenced to death.

Quince's waiver is a sufficient bar to *Hurst* relief, regardless of any future changes in the law, under both the Florida Supreme Court and this Court's precedent. If this Court were to accept review, the resolution of the case would turn upon whether the state court correctly interpreted the facts surrounding Quince's waiver. In other words, this case is strongly fact-based and does not implicate any broad questions of constitutional law that have not already been resolved long ago. *See, e.g., Blakely v. Washington*, 542 U.S. 296, 309 (2004) (Sixth Amendment right to jury fact finding is waivable). Indeed, the question raised by Quince may only be resolved by assessing the correctness of the trial court's factual findings. Accordingly, certiorari review is inappropriate here.

The waiver of the penalty phase jury remains valid in the wake of *Hurst* and consequently, Quince's waiver was not rendered involuntary due to the subsequent decision in *Hurst*. Here, Quince waived the right to a sentencing jury and requested that the trial judge decide the appropriate sentence in his case. Like the situation in *Mullens and Rodgers*, Quince should not be able to subvert the right to jury factfinding by knowingly waiving that right and then, over twenty years later, complain that subsequent developments in the law have undermined his sentence. Quince's explicit waiver of a penalty phase jury is a waiver of his pre-trial *Ring* (and, by extension, *Hurst*) claim.

Quince does not provide any compelling reason for this Court to review his case. Sup. Ct. R. 10. Cases that do not divide the federal or state courts or that do not present important, unsettled questions of federal law usually do not merit certiorari review. *Rockford Life Insurance Co. v. Illinois Dept. of Revenue*, 482 U.S. 182, 184, n.3 (1987). No conflict or unsettled question of federal law is presented in the instant petition. He challenges only the application of this Court's well-established principles to the Florida Supreme Court's decision. As Quince does not demonstrate any compelling reasons for this Court to exercise its certiorari jurisdiction under Rule 10, this Court should deny the petition.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 16th day of July, 2018, a true and correct copy of the foregoing RESPONDENT’S BRIEF IN OPPOSITION has been submitted using the Electronic Filing System. I further certify that a copy has been sent by U.S. mail to: Maria Perinetti, Law Office of the Capital Collateral Regional Counsel – Middle Region, 12973 N. Telecom Parkway, Temple Terrace, Florida 33637.

s/ Doris Meacham

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