

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. 24-6890

Earl I. Emanuel,
Moveant,

v.

State of Florida,
Respondent.

MOTION FOR REHEARING

Earl I. Emanuel Hereby moves this Honorable Court for a rehearing pursuant to Fed. R. App. P. 44, and states:

1. On May 19, 2025, this Court failed to get four votes to accept certiorari review of his petition.

2. On June 4, 2025, a request for rehearing was filed.

3. On June 30, 2025, the clerk responded with a notice giving until July 15, 2025 to perfect filing deficiencies.

4. It is respectfully submitted that the Court may have overlooked or misapprehended pertinent facts and/or points of law of the instant case.

5. This case represents an "Appendix" violation in that Florida law specifically orders that the penalty for the offense "must" be put before the jury and approved before the sentencing judge can obtain the discretionary jurisdiction

to sentence above the statutory guidelines of 921.022 score sheets. As stated by Justice Gorsuch in his *sub silentio* dissenting opinion certifying in Lunningham v. Florida, 144 S.Ct. 1287 (2024); "The people of Florida have the power to revise their jury practices..."

The people of Florida did revise their jury practices; they enacted criminal procedure laws, to wit:

1. F.S. 913.10 requiring 12-person juries for all capital trials and six-person juries for all others, and;
2. F.S. 918.10 (1) requiring that at the end of argument of counsel the judge shall instruct the jury only on the law of the case and the instruction "must" include the penalty for the offense charged.

However, in 1984 the Florida panel of Supreme Court Justices began actively engaging in legislative affairs by ruling that because the penalty notice encourages jury pardons they will amend their corresponding Rule 3.390 (a) to forbid penalty instructions. Then, they defined the word "Capital" to mean "death" to avoid providing 12-person juries instructed on the penalty in capital sexual battery trials, even though the alternative definition in the dictionary is "serious". SEE: *State v. Hogan*, 451 So2d 844 (Fl. 1984) at 846; and *In Re. 3.390 (a)*, 272 So2d 65 (Fl. 1971); 416 So2d 1126 (1982); 462 So2d 386 (Fl. 1984).

In this case before the court the petitioner was charged and convicted of committing a capital crime by a six-person jury based solely on the victim's testimonial credibility. The jury was not informed of the mandatory life without parole penalty attached to their verdict. When the alleged victim

recanted her testimony years later the hearing judge ruled that she believed she told the truth then but was lying now. This makes a mockery of *Re. Winship*, 397 U.S. 358 (1970).

The Framers of our Federal Constitution never intended for trial judges to have this much power. Throughout this court's precedents statutory laws predominated. See: *Teague v. Lane*, 489 U.S. 288, (1989); *N.Y. Times v. U.S.*, 403 U.S. 713 (1971); *U.S. v. Butler*, 297 U.S. 1 (1936); *Williams v. New York*, 337 U.S. 241, 247 (1949); *McGautha v. California*, 402 U.S. 183, 196-208 (1971); *Witherspoon v. Illinois*, 391 U.S. 510, 519-520 (1968) n.15; *Spencer v. Texas*, 385 U.S. 554, 560. (1967); *Gladio v. Pennsylvania*, 382 U.S. 399, 405, n.8 (1966). These have all stood on the fundamental power of the people to control the courts they created through enacted rules of due process.

This is a case of actual innocence brought by a United States citizen who is being illegally detained by a state judiciary that has violated basic principles of the separation of powers when they abrogated duly enacted laws without finding them unconstitutional, and creating a clear conflict between a rule and a law. Statutory Rule F.S. 918.10 (1) mandates the judge "must" instruct the jury on the penalty, and the judicially promulgated corresponding Rule 3.320(c) was amended to order the trial judge "shall not" instruct the jury on the penalty for the offense charged. This is stark evidence of the deprivation of due process of law guaranteed under the 14th Amendment. This Court is duty bound to address this complaint because the state courts are not expected to be unbiased.

CERTIFICATE OF GROUNDS AND GOOD FAITH

Wherefore, this petitioner hereby Certifies that the grounds presented are limited to Intervening circumstances of substantial controlling effect or other grounds not previously mentioned. This petition for rehearing is in good faith and not for delay. Pursuant to Fed.R.App. P. 41, Earl Emanuel prays this Court will recognize the Contradicting Statute 918.10 (1) and amended Rule 3.390 (a) are a blatant due process of law violation that cannot exist. Based upon this 14th Amendment violation the court should order a rehearing to resolve the conflict, and/or, send the case back to the Florida Supreme Court to be addressed as an "Apprendi". Violation cognizable under a rule 3.800 illegal sentence, and/or any other relief the court deems proper and just.

EARL EMANUEL

Earl Emanuel B12256
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Provided to South Bay Corr. and Rehab. Facility
on July 10 2025 for mailing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I, Earl Emanuel, D.C.# B12256 placed this petition for Rehearing into the hands of prison Mail Room personnel at South Bay Correctional Facility on this 10 day of July, 2025, for mailing through U.S. Mail, postage paid, to the Florida Attorney General Criminal Appeals Division, PK-01, The Capitol, Tallahassee, Fl. 32399-1050.

EARL EMANUEL

Earl I. Emanuel B12256

**Additional material
from this filing is
available in the
Clerk's Office.**