No. 25-5194

IN THE
SUPREME COURT OF THE UNITED STATES

EDWARD J. ZAKRZEWSKI,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JULY 31, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

I. Whether this Court should grant certiorari review of the Florida Supreme Court's decision rejecting Petitioner's successive postconviction claim that simple majority jury recommendations for a death sentence and judicial override of a life sentence recommendation in 1996 violates the Eighth Amendment?

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The Florida Supreme Court's decision is published at *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404 (Fla. July 22, 2025).

JURISDICTION

Zakrzewski invokes this Court's jurisdiction, based upon 28 U.S.C. § 1257(a), which generally provides this Court with jurisdiction over state appellate decisions involving a federal question. However, as explained below, this Court lacks jurisdiction of the question presented by Zakrzewski because the Florida Supreme Court's decision at issue rests upon independent and adequate state law grounds.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the Eighth and Fourteenth Amendments to the United States Constitution:

> 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.

U.S. Const. Amend. VIII.

> The Fourteenth Amendment to the United States Constitution, provides:
>
> > All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 9, 1994, Petitioner Edward J. Zakrzewski brutally murdered his wife with a crowbar and two young children with a machete. Zakrzewski pleaded guilty to the three murders and was sentenced to death for each, following a penalty phase before a jury. On July 1, 2025, Governor Ron DeSantis signed a death warrant scheduling Zakrzewski's execution for July 31, 2025, at 6:00 p.m.

Facts of the Crimes

Zakrzewski was a husband to Sylvia and father to two young children, Edward, age 7, and Anna, age 5. Prior to the murders, Zakrzewski and Sylvia experienced marital problems and discussed divorce. Twice, Zakrzewski told his neighbor that he would rather kill his wife and the two children, than lose them through a divorce. *Zakrzewski v. State*, 717 So. 2d 488, 490 (Fla. 1998).

On the morning of the murders, Zakrzewski's son, Edward, called him at work. Young Edward told his father that his mother intended to file divorce papers that day. During his lunch break, Zakrzewski purchased a machete, sharpened it, and returned to work. *Id.*

That evening, Zakrzewski arrived home before his wife and children and hid the machete in the bathroom. After his family settled in for the evening, Sylvia was sitting alone in the living room. Zakrzewski approached her and struck her in the head with the crowbar. The trial testimony established that Sylvia may have been rendered unconscious as a result of being struck, but that did not kill her. Zakrzewski dragged Sylvia into the bedroom, hit her again, and strangled her with rope. *Id.*

Zakrzewski called his son into the bathroom to brush his teeth. As Edward was

brushing his teeth, he saw his father with the machete in the mirror. Realizing what his father was doing, Edward put his hand up and tried to block the blows with his arm, causing defensive wounds to his wrist. Zakrzewski struck Edward hard, causing severe head, neck, and back injuries, killing him. Zakrzewski then put his son's body in the bathtub. *Id.* at 490-91.

After killing Edward, Zakrzewski called Anna into the bathroom, struck his daughter in the neck with the machete, draped her body over the bathtub, and continued to strike the child until she was dead. The State's blood spatter expert testified that the patterns showed Anna was kneeling over the bathtub when she was struck. Cuts on Anna's hand and elbow were consistent with defensive wounds. *Id.* at 491. Finally, Zakrzewski dragged his wife from the bedroom, into the bathroom. Not sure if Sylvia was dead, Zakrzewski hit her with the machete and she died from blunt force and sharp force injuries. *Id.* The next day, Zakrzewski fled to Hawaii where he changed his name, and lived for several months, before turning himself in to local authorities. *Zakrzewski*, 717 So. 2d at 491.

Convictions and Death Sentences

Zakrzewski was charged with three counts of first-degree murder of his wife and two young children and pleaded guilty to all three counts. *Zakrzewski*, 717 So. 2d at 490. Zakrzewski presented mitigation evidence to support two statutory mitigating circumstances: (1) no significant prior criminal history and (2) the murders were committed while under the influence of extreme mental or emotional disturbance. The witnesses also testified to support 24 non-statutory mitigators. *Id.*

at 491.

The State proved three aggravating factors that Zakrzewski: (1) was previously convicted of other capital offenses (the contemporaneous murders);[1] (2) committed the murders in a cold, calculated, and premeditated manner without pretense of legal or moral justification (CCP); and (3) committed the murders in an especially heinous, atrocious, or cruel manner (HAC). *Id.*

The jury recommended Zakrzewski be sentenced to death for Sylvia and Edward's murders (7-5 vote). The jury recommended life imprisonment for Anna's murder (6-6 vote). *Zakrzewski*, 717 So. 2d at 491. The trial court found that the State proved all three aggravating circumstances beyond a reasonable doubt for each of the three murders and gave significant weight to both of Zakrzewski's statutory mitigators. *Id.* The trial court also considered and gave weight to most of the 24 non-statutory mitigating circumstances. *Id.*, n.1.

Finding that the aggravating circumstances outweighed the mitigating factors for all three of the murders, the trial court followed the jury's recommendation of death for the murders of Sylvia and Edward. However, the trial court overrode the jury's life recommendation for Anna's murder and imposed a death sentence. *Zakrzewski*, 717 So. 2d at 491.

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[1] The jury was instructed in part, that: (1) Zakrzewski "has been previously convicted of three counts of first degree murder;" (2) its advisory sentence must be based upon its "determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty;" and (3) it may consider the aggravating circumstance that Zakrzewski "has been previously convicted of another capital felony" and a "conviction of contemporaneous murder . . . in the same episode can support a finding that [Zakrzewski] was previously convicted of another capital offence." DAR Vol. X at 1258-59.

Zakrzewski raised nine issues on direct appeal.[2] The Florida Supreme Court affirmed Zakrzewski's convictions and three death sentences. *Zakrzewski*, 717 So. 2d at 492–95. His convictions and death sentences became final in 1999 when this Court denied his petition for writ of certiorari on January 25, 1999. *Zakrzewski v. Florida*, 525 U.S. 1126 (1999).

Prior Collateral Proceedings

2000 Initial State Court Postconviction Motion: Zakrzewski raised five claims in the initial state court postconviction motion under Fla. R. Crim P. 3.851: (1) trial counsel were ineffective for failing to move to suppress evidence seized from his home; (2) his guilty pleas were involuntary; (3) he was denied a fair penalty phase before a panel of impartial jurors; (4) trial counsel were ineffective for failing to object to the State's improper closing argument; and (5) Florida's death penalty statute is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002). *Zakrzewski v. State*, 866 So. 2d 688, 691–92 (Fla. 2003). The trial court denied the motion, which was affirmed on appeal. *Id.* Zakrzewski did not seek certiorari review of this Court.

[2] (1) The trial court erred by finding HAC; (2) the trial court erred by finding CCP because he was under extreme emotional distress at the time of the murders; (3) the death sentence is not proportionate; (4) the trial court erred in overriding the jury's recommendation of life for Anna; (5) the trial court erred allowed prejudicial photographs of the victims; (6) the trial court erred permitting State's mental health expert to testify about Nietzsche and Christianity; (7) the trial court erred permitting State's expert testimony, when it did not rebut Zakrzewski's mental health expert; (8) the trial court failed to instruct the jury that Zakrzewski's ability to understand his conduct was substantially impaired; and (9) the trial court failed to instruct the jury on each of Zakrzewski's non-statutory mitigating factors. *Id.* at 492.

2004 Federal Petition for Writ of Habeas Corpus: Zakrzewski filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the Northern District of Florida, raising six grounds for relief.[3] *Zakrzewski v. Crosby, et. al.*, 3:04-cv-00066 (N.D. Fla. Feb. 23, 2004). One of the issues relevant to this Petition is Zakrzewski's Sixth Amendment challenge to Florida's death penalty statute based on *Apprendi v. New Jersey* and *Ring v. Arizona*. The District Court denied the petition, but issued a certificate of appealability to the Eleventh Circuit for ineffective assistance of counsel claims, which were denied on appeal. *Zakrzewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006).

Zakrzewski filed a Federal Rule of Civil Procedure 60(b) motion to reopen the federal habeas proceedings and alleged that state registry counsel and appointed federal habeas counsel perpetrated fraud on him and the federal court. The motion was dismissed as a successive habeas petition, but reversed by the Eleventh Circuit and remanded for reconsideration on the merits. *Zakrzewski v. McDonough*, 490 F.3d 1264 (11th Cir. 2007). On remand, the district court denied Zakrzewski's Rule 60(b) motion. *Zakrzewski v. McDonough*, No. 3:04cv66, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007). The district court granted a certificate of appealability on the question of

[3] (1) Fifth, Sixth, and Fourteenth Amendment claims for denial of due process of law and a fair trial because the state was permitted to present expert testimony about his alleged anti-Christian beliefs; (2) ineffective assistance of counsel for failure to object to the state's penalty phase closing arguments; (3) Sixth Amendment challenge to Florida's death penalty statute based on *Apprendi v. New Jersey* and *Ring v. Arizona*, *supra*; (4) Eighth Amendment and equal protection claim that the death penalty is disproportionate; (5) ineffective assistance of counsel for failure to file a motion to suppress; and (6) denial of a fair trial due to the admission of graphic crime scene photographs into evidence in the sentencing phase.

whether Petitioner's Rule 60(b) motion alleged facts sufficient to constitute fraud upon the court. *Zakrzewski v. McDonough*, No. 3:04cv66, 2008 WL 150050 (N.D. Fla. Jan. 14, 2008). The Eleventh Circuit found the district court did not abuse its discretion denying Zakrzewski's Rule 60(b) motion. *Zakrzewski v. McNeil*, 573 F.3d 1210 (11th Cir. 2009), *cert. denied*, 560 U.S. 956 (2010).

2009 First Successive State Postconviction Motion: Zakrzewski raised two claims: (1) Florida's lethal injection protocol violated the Eighth Amendment to the United States Constitution; and (2) newly discovered evidence consisting of a 2006 American Bar Association Report demonstrated that his conviction and death sentences constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The motion was summarily denied and affirmed by the Florida Supreme Court. *Zakrzewski v. State*, 13 So. 3d 1057 (Fla. 2009). Zakrzewski did not seek this Court's certiorari review.

2010 Second Successive State Postconviction Motion: Zakrzewski raised two claims: (1) his convictions and death sentences violated the First, Sixth, and Eighth Amendments under *Porter v. McCollum,* 558 U.S. 30 (2009); and (2) the circuit court erred denying his motion to amend the postconviction motion, in light of new lethal injection protocols adopted. The Florida Supreme Court affirmed the trial court's summary denial of the successive motion. *Zakrzewski v. State*, 115 So. 3d 1004 (Fla. 2012). Zakrzewski did not seek this Court's certiorari review.

2013 Third Successive State Postconviction Motion: Zakrzewski claimed the State's penalty phase expert witness violated *Brady* and *Giglio*.[4] The circuit court summarily denied the motion, which was affirmed by the Florida Supreme Court. *Zakrzewski v. State*, 147 So. 3d 531 (Fla. 2014), *cert. denied,* 575 U.S. 918 (2015).

2016 State Petition for Writ of Habeas Corpus: Zakrzewski sought state habeas relief and claimed his death sentences were unconstitutional under *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The Florida Supreme Court denied the petition because, in accordance with its decision in *Asay v. State*, 210 So. 3d 1 (Fla. 2016), *Hurst v. Florida* did not apply retroactively to Zakrzewski, as his death sentences were final in 1999, prior to *Ring*. *Zakrzewski v. Jones, etc.*, 221 So. 3d 1159 (Fla. 2017), *reh'g den*., 2017 WL 3027224 (Fla. July 18, 2017).

2017 Fourth Successive State Postconviction Motion: Zakrzewski again sought relief under *Hurst v. Florida* and *Hurst v. State*, but this time from the circuit court in a successive postconviction motion. The motion was summarily denied and affirmed on appeal. *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert. denied*, 587 U.S. 988 (2019). The Florida Supreme Court stated, "all of Zakrzewski's claims depend on the retroactive application of *Hurst*, to which we have held he is not entitled" and its denial of Zakrzewski's habeas petition served as a procedural bar. *Id.* at 324. The Court further cautioned that a rehearing motion would be stricken. *Id.* at 325.

Current Warrant Proceedings

[4] *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

Florida Governor Ron DeSantis signed Zakrzewski's death warrant on July 1, 2025 and scheduled his execution for July 31, 2025, at 6:00 p.m. Represented by Capital Collateral Regional Counsel – Northern Region, Zakrzewski filed a fifth successive state postconviction motion and raised three claims for relief: (1) executing an individual whose jury vote would have made him ineligible for the death penalty today, is arbitrary and violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution; (2) the condensed warrant litigation period and overlapping warrant ligation of another death row defendant violated his right to due process and access to the courts and counsel under the Fifth, Sixth, and Fourteenth Amendments; and (3) signing his death warrant without conducting a new clemency review is arbitrary and violates the Equal Protection Clause, the Fifth, Eighth, and Fourteenth Amendments, and corresponding provisions of the Florida Constitution. *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, *2 (Fla. July 22, 2025). Zakrzewski also filed a motion for stay of execution with the circuit court. *Id*. The trial court summarily denied relief on all three claims, finding them to be untimely, procedurally barred, and meritless in light of established precedent, and denied the motion for stay. *Id.*

Zakrzewski appealed the circuit court's (1) summary denial of all three claims raised in his fifth successive postconviction motion; (2) denial of the motion for stay of execution; and (3) denial of Florida Rule of Criminal Procedure 3.852 demands for public records. The Florida Supreme Court affirmed the circuit court's summary denial of Zakrzewski's successive state postconviction motion, specifically finding the

claim asserting his death sentences violated the Eighth Amendment due to the simple majority jury recommendations and judicial override of the life sentence was untimely, procedurally barred, and meritless. *Id. at* *3.

REASONS FOR DENYING THE PETITION

I. Whether this Court should grant certiorari review of the Florida Supreme Court's decision rejecting Petitioner's successive postconviction claim that simple majority jury recommendations for a death sentence and judicial override of a life sentence recommendation in 1996 violates the Eighth Amendment?

Petitioner Zakrzewski seeks review of the Florida Supreme Court's decision rejecting his claim that his death sentences violate the Eighth Amendment and evolving standards of decency under *Trop v. Dulles*, 356 U.S. 86 (1958). Petition at 10–11. Although not plainly stated in the Petition, Zakrzewski's claim is based on two aspects of his penalty phase: (1) the 7-5 jury recommendations of death sentences for the murders of his wife and 7-year-old son; and (2) the trial court's override of the jury's life sentence recommendation for the murder of his 5-year-old daughter. *Zakrzewski*, 2025 WL 2047404 at *3. He also invoked *Hurst v. Florida*, 577 U.S. 92 (2016) and argued that if sentenced today, he would not be eligible for the death penalty based on a simple majority jury recommendation. *Id.* at *4. This is not a proper vehicle for this Court to grant certiorari review because the Florida Supreme Court found the claim was untimely and procedurally barred.

A. The Florida Supreme Court's Decision in this Case

The Florida Supreme Court affirmed the trial court's summary denial of Zakrzewski's fifth successive state postconviction motion filed in his active death warrant proceedings. The sole postconviction claim raised in the Petition is that his

1996 death sentences were unconstitutional and violate the Eighth Amendment, due to a bare majority jury recommendation for two of the murders and the judicial override of the recommended life sentence for the third murder. *Zakrzewski*, 2025 WL 2047404 at *3. Both aspects of the claim were rejected as untimely, procedurally barred, and meritless. *Id.*

Zakrzewski's claim was untimely based on the Florida Supreme Court's application of the Florida rule of court which prohibits a successive postconviction claim raised more than one year after his judgments and sentences became final, unless it falls within one of three stated exceptions. *Zakrzewski*, 2025 WL 2047404 at *3 (citing Fla. R. Crim. P. 3.851(d)). Zakrzewski's judgment and sentences became final in 1999 when this Court denied certiorari review of the Florida Supreme Court's decision affirming his sentences. *Id.* at *3.

In order to escape the time-bar, Zakrzewski argued that the claim was not ripe until his death warrant was signed. *Id.* The Florida Supreme Court rejected the ripeness argument and observed that "this proposed exception would swallow the rule as to timeliness." *Id.* It concluded that the claim was "foreclosed by the record" in that Zakrzewski conceded raising the simply majority recommendation argument and judicial override prior to the 1996 trial, after sentencing, and "every step of the way." *Id.* The Florida Supreme Court concluded the claims were not contingent on the signing of his death warrant, but "have been available to him and extensively litigated in the last three decades." *Id.* (citations omitted). There is no federal aspect to the Florida Supreme Court's determination that the claim was untimely.

The Florida Supreme Court also rejected Zakrzewski's claim as procedurally barred. The Florida Supreme Court rejected both the judicial override and *Hurst v. Florida* and bare majority jury recommendation aspects of the claim, relying on the "many times" it "held that a postconviction claim is procedurally barred when it was or could have been litigated on direct appeal." *Zakrzewski*, 2025 WL 2047404 at *4. (citations omitted). On direct appeal, Zakrzewski asserted that the trial court erred in overriding the jury's recommendation of life imprisonment for the murder of Anna." *Id.* The Florida Supreme Court reiterated its affirmance of the trial court's jury override stating, "the facts suggesting the sentence of death for all three of these murders are clear and convincing, and as to Anna, even more compelling," and we concluded, "'no reasonable person could differ' as to the appropriateness of the death penalty for the murder of Anna." *Id.* (quoting *Zakrzewski*, 717 So. 2d at 494). It held, "Zakrzewski cannot now use the postconviction proceeding as a means of obtaining a second appeal of the issue." *Id.*

Turning to the 7-5 jury recommendations and Zakrzewski's *Hurst v. Florida* claim, the Florida Supreme Court found it too was procedurally barred. To overcome the procedural bar, Zakrzewski invoked the Eighth Amendment and evolving standards of decency and argued that "he could not be sentenced to death today on the basis of a simple majority advisory vote from a penalty-phase jury." *Zakrzewski*, 2025 WL 2047404 at *4. He also asserted that the Florida Supreme Court need not be bound by the law-of-the-case doctrine. *Id.*

The Florida Supreme Court again denied Zakrzewski's invitation to reconsider

its precedent on *Hurst v. Florida* and *Hurst v. State*'s retroactivity. *Id.* The state high court viewed his active death warrant claim as merely "a repackaged *Hurst* claim," which it had rejected two times during the state postconviction proceedings. *Id.* The Florida Supreme Court cited its prior denial of Zakrzewski's state habeas petition, where the court held *Hurst v. Florida* and *Hurst v. State* do not apply retroactively to him. *Zakrzewski*, 221 So. 3d at 1159. The state high court also cited its affirmance of the trial court's summary denial of *Hurst* claims in Zakrzewski's fourth successive postconviction motion. *Zakrzewski*, 254 So. 3d at 324.

B. Independent and Adequate State Law Grounds

This Court lacks jurisdiction over cases that do not present federal questions. 28 U.S.C. § 1257. This Court has explained that if "the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). This Court's jurisdiction "fails" if the non-federal ground is independent and adequate to support the judgment. *Long*, 463 U.S. at 1038, n.4 (quoting *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935)). A decision "is independent only when it does not depend on a federal holding" and "is not intertwined with questions of federal law." *Glossip v. Oklahoma*, 145 S. Ct. 612, 624 (2025).

The Florida Supreme Court rejected Zakrzewski's simple majority jury recommendation and judicial override issues as untimely and procedurally barred. *Zakrzewski*, 2025 WL 2047404 at *3. It was not intertwined with federal law in any

manner. It accurately interpreted the applicable Florida rule of court to determine the timeliness of successive postconviction claims and determined no exception to the time bar applied. The Florida Supreme Court also exclusively and accurately applied state law cases to determine that each aspect of the claim was equally procedurally barred. "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Glossip*, 145 S. Ct. at 624 (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)).

There is no federal constitutional aspect to the Florida Supreme Court's determination that the claim was untimely and procedurally barred. The time and procedural bars, which Zakrzewski fails to challenge in any question presented, are independent and adequate state grounds. This Court therefore lacks jurisdiction over the decision below. *See Glossip v. Oklahoma*, 145 S. Ct. 612, 624–26 (2025) (explaining independent and adequate state grounds deprive this Court of jurisdiction).

C. No conflict with this Court's Jurisprudence

The Florida Supreme Court's decisions on the judicial override and simple majority jury recommendation do not conflict with this Court's Eighth Amendment jurisprudence. The Petition's reliance on the Eighth Amendment's prohibition of cruel and unusual punishment and evolving standards of decency arguments are misplaced. The Sixth Amendment's right to a jury trial provision governs a jury's sentencing role, not the Eighth Amendment. Zakrzewski's generalized Eighth Amendment arguments fail because it is the Sixth Amendment's particular and

specific constitutional provision that "must be the guide for analyzing" his simple majority recommendation claims. *Graham v. Connor*, 490 U.S. 386, 395 (1989).

Zakrzewski argues that the Florida Supreme Court's most recent rejection of his claim for relief under *Hurst v. Florida* (as well as those in 2016 and 2017) was "arbitrary" and violative under the Eighth Amendment. Petition at 10–12. His claim is based on *Hurst v. Florida*'s finding that a jury must find the aggravating circumstance that makes a defendant death eligible. *Hurst*, 577 U.S. at 103.

This Court's decision in *McKinney v. Arizona*, 589 U.S. 139 (2020) controls and forecloses Zakrzewski's arguments that *Hurst v. Florida* should retroactively apply to his 1996 death sentences under the Eighth Amendment or evolving standards of decency. In *McKinney*, this Court confirmed that neither *Ring*, nor *Hurst v. Florida* "apply retroactively on collateral review." *Id.* at 145. *McKinney* further clarified the decision in *Hurst v. Florida* that, in order to sentence one to death, the Sixth required a jury to find a single aggravating factor. It explained that under *Ring* and *Hurst v. Florida*, "a jury must find *the* aggravating circumstance that make the defendant death eligible." *Id.* at 144 (emphasis added). In other words, the Sixth Amendment does not require that a jury make a sentencing recommendation at all, much less a unanimous or super majority recommendation. A jury need only find "the existence of the *fact* that an aggravating factor existed" and is not constitutionally required to weigh the aggravating and mitigation factors. *Id.* at 144-45.

This Court made it clear that a jury recommendation of a death sentence is not constitutionally required. Further, applying *McKinney* to Zakrzewski's case, his

guilty pleas to three first-degree murders served as convictions, satisfying the constitutional requirement and rendered him death penalty eligible the minute his penalty phase began. The Florida Supreme Court specifically found that Zakrzewski's guilty pleas were equivalent to convictions and the "prior violent felony or capital felony conviction aggravator exempts this case from the requirement of jury findings on any fact necessary to render a defendant eligible for the death penalty." *Zakrzewski v. State*, 866 So. 3d 688, 696-97 (Fla. 2003) (citing *Boykin v. Alabama,* 395 U.S. 238, 242 (1969) ("A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.")). *See also Ford v. State*, 402 So. 3d 973, 981 (Fla. 2025), *cert. denied*, 145 S. Ct. 1161 (2024).

Zakrzewski blatantly ignored *McKinney* and its significance. Instead of recognizing or somehow distinguishing *McKinney*, Zakrzewski relies on *Trop v. Dulles* to support his argument that the evolving standards of decency no longer support the very existence of capital punishment. *See* Petition at 11. But *Trop* does not serve as a vehicle or segue for an Eighth Amendment argument for relief, as opposed to proper Sixth Amendment analysis and application.

Zakrzewski's conclusory Eighth Amendment arguments fail because it is the Sixth Amendment's particular and specific constitutional provision that "must be the guide for analyzing" his simple majority recommendation claims. *Graham v. Connor*, 490 U.S. 386, 395 (1989). *See also County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998); *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997). He has provided no

reasoned explanation for the Eighth Amendment and evolving standards of decency arguments, as opposed to proper analysis under the Sixth Amendment. Moreover, he cannot rely on the Eighth Amendment to attack a simple majority jury sentencing recommendation, when the Sixth Amendment's right to jury trial does not require a jury's involvement in sentencing. A jury is constitutionally required to find the aggravating circumstance to make the defendant death eligible. *McKinney*, 589 U.S. at 144.

The Petition mentions *Ramos v. Louisiana*, 590 U.S. 83 (2020), a non-capital Sixth Amendment case, which offers no support to his claim, either. Petition at 16. As explained by *McKinney*, it is the aggravator which makes a capital defendant eligible for a death sentence and which must be found by the jury. In the wake of *Ramos*, a jury must find it unanimously. In *Ramos*, this Court held that the Sixth Amendment's jury unanimity requirements applies only to the verdict itself. *Ramos*, 590 U.S. at 93. In Zakrzewski's case, he pleaded guilty to all three murders and that *de facto* conviction satisfied the jury's finding of the contemporaneous capital felony aggravator to render him death penalty eligible, thereby satisfying *Ramos*.

Regarding the judicial jury override, the state high court observed that in his initial brief, Zakrzewski acknowledged that his trial judge "could override a jury's recommendation where 'the facts suggesting a sentence of death [were] so clear and convincing that virtually no reasonable person could differ.'" *Id.* (quoting *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975)). *Zakrzewski*, 2025 WL 2047404 at *4. The Florida Supreme Court reiterated its finding in its direct appeal decision that:

> . . . the facts suggesting the sentence of death for all three of these murders are clear and convincing, and as to Anna, even more compelling," and we concluded, "'no reasonable person could differ' as to the appropriateness of the death penalty for the murder of Anna." *Zakrzewski I*, 717 So. 2d at 494 ("In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." (quoting *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975))). Zakrzewski cannot now use the postconviction proceeding as a means of obtaining a second appeal of the issue. *See Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) ("[U]sing 'a different argument to relitigate the same issue' ... is inappropriate." (quoting *Medina v. State*, 573 So. 2d 293, 295 (Fla. 1990))).

Id. (quoting *Zakrzewski*, 717 So. 2d at 494). Zakrzewski does not demonstrate any conflict of decisions, or provide important or unsettled federal law question that would warrant the intervention of this Court on the issue of jury override.

Even if viewed as an Eighth Amendment issue, there is still no conflict between the Florida Supreme Court's decision and this Court's Eighth Amendment jurisprudence. This Court has long held that the Eighth Amendment does not require jury sentencing in capital cases. *See Spaziano v. Florida*, 468 U.S. 447 (1984); *Harris v. Alabama*, 513 U.S. 504 (1995). Zakrzewski pleaded guilty to all three murders and in so doing, the aggravating factor that he was previously convicted of other capital offenses was instantly met. *Ford*, 402 So. 3d at 891. Therefore, under *McKinney*, the constitutional requirement that at least one aggravator be found was satisfied and Zakrzewski was eligible to be sentenced to death based on his pleas, contrary to the Petition's arguments. Because the Petition fails to acknowledge or account for this Court's *most relevant* decision to the issue raised, this alone should preclude review.[5]

[5] The Petition includes an Equal Protection Clause argument, outside of the question

This Court has denied review of substantially similar Eighth Amendment questions in three Florida capital cases. *James v. Florida*, 145 S. Ct. 1351 (2025) (No. 24-6775); *Dillbeck v. Florida*, 143 S. Ct. 856 (2023) (No. 22-6819); *Zack v. Florida*, 144 S. Ct. 274 (2023) (No. 23-5653). Zakrzewski makes many of the same arguments as those made in *James*, albeit under differing factual circumstances.

Therefore, there is no conflict between the Florida Supreme Court's decision in this case and this Court's jurisprudence. Review should be denied.

D. No conflict with federal appellate or state supreme courts

There is no conflict between the Florida Supreme Court decision in this case and that of any federal appellate court or state supreme court. 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

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presented and violative of Rule of the Supreme Court of the United States 14.1(a). Petition at 14–15. Zakrzewski did not raise an Equal Protection attack on the judicial override or simple majority recommendation in the Florida Supreme Court. He made one isolated mention of Equal Protection in the Conclusion to this issue in the initial state court brief. *See Zakrzewski v. State* (SC25-1009) Initial Brief at 30. A petitioner may not raise an issue for the first time in this Court because this Court "is one of final review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005); *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001); *Trump v. United States*, 603 U.S. 593, 617 (2024) (quoting *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012)).

Throughout the Petition, Zakrzewski argues that he is being treated differently than present day capital defendants because (1) he was not afforded retroactive *Hurst* relief; and (2) if he received a 7-5 jury recommendation under Florida's current statutory capital sentencing scheme which requires at least a 8-4 jury death recommendation, he would be sentenced to life imprisonment. Petition at 12–15. He generally argues that Florida's capital sentencing scheme is an outlier compared to other states and in so doing, he conflates Florida state law with constitutional requirements prescribed in by this Court in *McKinney*.

provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); *see also* Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). In the absence of such conflict, certiorari is rarely warranted.

There is not conflict between the Florida Supreme Court's decisions that *Hurst* is not retroactive in Zakrzewski's case and the federal courts of appeal. *Zakrzewski*, 2025 WL 2047404 at *3. The Eleventh Circuit has held that *Hurst v. Florida* is not retroactive at all. *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1165, n.2 (11th Cir. 2017) ("under federal law *Hurst*, like *Ring*, is not retroactively applicable on collateral review"), *cert. denied*, 583 U.S. 883 (2017). The Ninth Circuit has also held that *Hurst v. Florida* is not retroactive. *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). No federal appellate court has held to the contrary.

Zakrzewski did not cite any federal circuit or state supreme court which does not follow *McKinney*. Nor does he cite any federal or state court that holds the that the Sixth Amendment requires jury recommendations in capital cases. *See e.g., Davis v. Jenkins*, 115 F.4th 545, 558 (6th Cir. Aug. 20, 2024) (stating that Ohio, which occasionally leaves the ultimate life-or-death decision to the judge "may continue to do so," relying on *McKinney*); *State v. Trail*, 981 N.W.2d 269, 308-09 (Neb. 2022) (holding Nebraska's death penalty statute, which provides for a three-judge panel to perform the weighing of aggravating and mitigating circumstances in capital cases

does not violate the Sixth Amendment, relying on *McKinney*).

Zakrzewski does not cite any cases from a federal circuit court or state court of last resort contrary to the Florida Supreme Court's holding that *Hurst v. Florida* does not apply retroactively to pre-*Ring* cases. Nor does the Petition include cases which conflict with the Florida Supreme Court's affirmance of the judicial override.

CONCLUSION

Based on the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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