No. 25-6288

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER DERTING,

Petitioner,

vs.

SECRETARY DEPT. OF CORRECTIONS, et., al.

Respondant,

_____/

ON PETITION FOR A WRIT OF CERTIORARI TO FIFTH DISTRICT COURT OF APPEALS OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Christopher Derting, DC #121880

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QUESTION(S) PRESENTED

The State of Florida employs recidivism statute 775.084 known as "Habitual Offender Statute". The statute has several factual determinations that need to be satisfied in order to operate. These facts, or "Certain circumstances", are allowed per the statute to be determined by a judge under a preponderance of the evidence standard, instead of having these facts heard and determined by a jury beyond a reasonable doubt. Both of the following questions are incorporated in one argument and relate to the same issue of constitutionality and the Fifth and Sixth Amendments being denied to thousands of Florida defendants and petitioner.

1. Does Florida Statute 775.084 run afoul of the Fifth and Sixth Amendment's and this courts precedent and how it was applied to petitioner, because it makes no provision for a jury to determine the "certain circumstances" requirement of 775.084 beyond a reasonable doubt, thereby entitling petitioner to a *de novo* resentencing, since the jury didn't give the court the power to punish beyond the statutory maximum?
2. Can a harmless error analysis be employed to uphold a sentence that was imposed under a statute that is contrary to the Fifth and Sixth Amendments by using Shepard Documents that are prone to mistakes?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page

[x] All parties DO NOT appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Dixon Hon. Rickey – Secretary, Fla. Department of Corrections

Harris Hon. – Fla. Fifth District Court of Appeal

Lambert Hon. – Fla. Fifth District Court of Appeal

Pratt Hon. – Fla. Fifth District Court of Appeal

Salem Hon. Anthony R – Fla. Fourth Judicial Circuit

Uthmeier James – Fla. Attorney General

Uwaibi Amanda – Fla. Assistant Attorney General

RELATED CASES

Derting v. State, 54 So. 3d 492; 2011 Fla. App. Lexis 2306. Court of Appeals of Florida, First District, Case No. 1009-5381. Opinion filed Feb 21, 2011.

Derting v State, 108 So. 3D 1128; 2013 Fla. App. Lexis 3899, Court of Appeals of Florida, First District. Case No. 1013-0808. Opinion filed March 12, 2013.

Derting v. State, 228 So. 3D 554; 2017 Fla. App. Lexis 16185, Court of Appeals of Florida, First District. Case No. 1016-2141. Decided Oct. 16, 2017.

Derting v. Sec'y, Dep't of Corr., 2020 U.S. Dist. Levis 34395, United States District Court of the Middle District of Florida, Jacksonville Division Case No. 3:17-cv-1315-j-39mcr. Denied Fed. 27, 2020

Derting v. Sec'y, Dep't of Corr., 2020 U.S. App. Lexis 27271 (11th Cir. Fla., Aug. 26, 2020).

Derting v. Sec'y, Dep't of Corr., 2020 U.S. App. Lexis 846, 2022 wl 104280 (11th Cir. July 6, 2022). Held Abeyance

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTORARI

Petitioner respectfully prays that a Writ of Certiorari Issue to review the judgment below.

OPINIONS BELOW

[X] For Cases from State Courts:
The opinion of the highest state court to review the merits appears at Appendix __B___ to the petition and is:
[ ] Reported At
[ ] Has been designated for publication but is not yet reported; or,
[X] Is unpublished.

The opinion of the Fourth Judicial Circuit Duval County FLA. Court appears at Appendix B to the Petition and is
[ ] Reported at
[ ] Has been designated for publication but is not yet reported; or,
[X] Is unpublished.

JURISDICTION

[X] For Cases from State Courts:
The date on which the highest state court decided my case was September 9, 2025. A copy of that decision appears at Appendix A.
[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____
[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ on _____ in Application No. _____ A_____.

The jurisdiction of this court is invoked under 28 U.S.C. §1257(2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See Appendix H

STATEMENT OF CASE

Following his conviction for the sale of one tenth (0.1) of a gram of crack cocaine, Christopher Derting was sentenced on September 17, 2009 to thirty (30) years in prison. The trial court imposed the enhanced sentence because [it] concluded Derting had met the "Certain Circumstances" requirement necessary to advance a Habitual Offender Sentence pursuant to Fla. Stat. §775.084. The Judge reached this conclusion based on Shepard Documents from the Department of Corrections which purported to reflect the date of Petitioner's release from prison and end of supervision.

This Court's recent decision in *Erlinger* brought to light that Florida's Habitual Felony Offender (HFO) statue (775.084) is unconstitutional on its face as well as how it was applied to petitioner and Florida Defendants.

Petitioner filed a Motion to Correct Illegal Sentence pursuant to Rule 3.800(a) which brought to the trial courts attention that statute

775.084 violates his Fifth and Sixth amendment rights (App C #4) because it makes no provision for a jury to determine the factually intensive, "Certain circumstances" requirement needed to enhance a sentence beyond the statutory maximum. See, Appendix C #6. Instead, the statue places the power to punish in the hands of a judge by a preponderance of the evidence. See Appendix C #7.

The trial court, in its denial of petitioner's motion states as follows: "The limited holding in *Erlinger* – that the constitution requires a jury to decide the factually intensive question of whether past offenses were committed on separate occasions under the Federal Armed Career Criminal Act – does not apply here."

The court went further by stating: "Indeed, controlling precedent rejected this same argument in response to earlier *Apprendi* progeny:

> The determination that a prior conviction exists necessarily includes the question whether that conviction has been pardoned or set aside. The Determination that a prior conviction exists also includes the relevant facts about the conviction: The date of the prior conviction, the sentence punishment imposed, and the date of the defendant's end of sentence or release from supervision."

Luton v. State, 934 So 2d 7 at 10. See Appendix B

This denial proves two things,(1) that Florida courts are incorrectly interpreting *Apprendi's* [THE] fact of a prior conviction to mean [ANY] fact related to a prior conviction, and (2) they are dismissing the principle of *Erlinger's* "Separate Occasions" being materially yoked to the HFO's "Certain Circumstances" requirement.

After the denial, Petitioner sought rehearing addressing Florida's incorrect Interpretation of *Apprendi* and notified the court of *Erlinger's* definition of *Apprendi's* limited exception. See Appendix D #5

The Motion for Rehearing was denied on December 30, 2025. See Appendix E. Petitioner sought review in Florida's Fifth District Court of Appeal, by filing an Initial Brief. On April 24, 2025. See Appendix F.

The Fifth District denied Petitioners brief with a Per Curium Affirmed decision, on September 2025, to which, Petitioner sought a written Opinion.

Thus, even after a very detailed motion to correct illegal sentence, (App. C) motion for rehearing (App. D) and Initial Brief (App. F), Florida is still determined to believe the "certain circumstances" requirements on Fla. Stat. 775.085 operates consistent with the Fifth and Sixth Amendments. See Appendix B.

REASON FOR GRANTING THE PETITION

Petitioner believes the function of this Court is not only to protect the constitution and the rights it guarantees to its citizens, but to also shepherd America into a more peaceful co-existence through the implementation of laws. However, sometimes those laws are incorrectly interpreted and need clarification. If not, American citizens along with their constitutional rights are ignored and their liberty lost. This is especially true for millions of pro se defendants wading through a legal system that is as complex as physics to a fifth grader.

The violation of a persons constitutional rights should never be found to be harmless or arbitrary. However, because of Florida's incorrect interpretations and application of *Apprendi* and *Almendarez-Torres's* limited exceptions, thousands of Florida residents, petitioner included, are being stripped of their Fifth and Sixth Amendment Rights. The courts are giving sentences that exceed the statutory maximum through the implementation of a sentencing scheme that makes no provision for a jury to decide the "certain circumstances" necessary to invoke the enhancement.

Therefore, petitioner humbly prays this Court grant this petition in order to restore the rights of our Constitution to the defendants of Florida and this Petitioner.

This Court's recent decision in *Erlinger v. United States*, 144 S. Ct. 1840 (2024), confirms that section 775.084 ("The HFO Statute"), is unconstitutional on its face. It has been unconstitutional on its face since its inception, or at the very least, since this Court rendered its decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), ("Other than the fact of a prior conviction, Any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490), and *Ring v. Arizona*, 536 U.S. 584 (2002).

The "HFO" statute permits a judge rather than a jury to make factual determinations proving "certain circumstances" were met, allowing the increase in defendants sentencing range. The HFO statute requires that those findings be made by a preponderance of the evidence instead of beyond a reasonable doubt and will be discussed in (B.) below. Therefore, the statute is unconstitutional on its face because there are no set of circumstances under which it complies with the requirements of

the Fifth and Sixth amendments to the United States Constitution, or with Article I, Section 16 and 22 of the Florida Constitution.

The Statute is also unconstitutional as applied to Christopher Derting because the trial judge made the determination regarding the date he was released from supervision (among other factors) under a preponderance of the evidence standard.

Therefore, petitioner humbly prays this Court grant this petition and states as follows:

A. The Record is Adequate to Decide this Matter

The Record on appeal is light but adequate to determine that, Florida Statue 775.084 is unconstitutional on its face, and how it was applied to petitioner.

The record also reflects the decision in *Apprendi* has been either incorrectly interpreted or disregarded depending on the instance. See, *Saldo v. State,* 789 So 2d 1150 (3rd DCA 2001) (*Apprendi* does not apply to habitual felony offender sentencing even if the decision in *Apprendi* apply retroactively.)

The record and applicable case law will show that the "separate occasions" of the Armed Career Criminal Act (ACCA) is materially yoked to the "certain circumstances" requirement of Florida Habitual Offender

(HFO) statute 775.084 in that, both require factual determinations of "time and space". *Erlinger v. United States,* 144 S. Ct. 1840 (2024) at 1856.

Lastly, in the lower tribunal's denial, it does not dispute a judge, not a jury imposed a sentence by a preponderance of evidence standard." (App B)

B. Habitual Felony Offender, Florida Statue 775.084

Section 775.084(1)(a), Fla. Stat. (2023), the habitual felony offender statue, provides for an enhanced sentence if the defendant has previously been convicted of two or more felonies. The statute requires a judicial factual determination that the felony pending sentencing was committed under "**Certain Circumstances**". The statue provides;

(a) "Habitual Felony Offender" means a defendant for whom the court may impose an extended term of imprisonment, as described in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentence was committed,

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within five years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within five years of the defendants release from a prison sentence, probation, community control, controlled release, parole or court-ordered or lawfully imposed supervision or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of statue 893.13 relating to the purchase or possession of a controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph. § 775.084(1)(a), Florida Statute (Fla. 2023). **Only a preponderance of the evidence must support the judicial findings leading to a habitual offender sentence** 775.084(3)(a)4, Florida Statute (Fla. 2023).(emphasis added)

As seen from the plain language of this statute, the "certain circumstances" requirement is factually intensive and should be determined by a jury to remain consistent with the Fifth and Sixth amendments.

C. Section 775.084 is Unconstitutional on its face

The HFO statute is facially unconstitutional pursuant to the Fifth and Sixth Amendments to the United States Constitution, and pursuant to Article I, Section 16 and 22 of the Florida Constitution. The plain language of the statue cannot be reconciled with the numerous decisions of this Court over the past two and half decades starting with *Apprendi v. New Jersey,* 530 U.S. 466 (2000) (Except for the fact of a prior conviction, "**any fact** that increases the penalty for a crime beyond the proscribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.") 530 U.S. at 490.

The plain language of the HFO statute in B. above, makes no provision for a jury to determine beyond a reasonable doubt the factually intensive "certain circumstances" requirements necessary to enhance a sentence.

Florida's First District Court of Appeal in its decision in *Gray v. State,* 910 So 2d 867 (Fla. 1st DCA 2005) rightly states:

"Finding that trial court abused its discretion in relying upon inadmissible hearsay evidence to establish defendants date of release from prison for purposes of PRR sentencing clearly determining the admissibility and sufficiency of the evidence are not ministerial acts, but judicial acts requiring both judgment and discretion".

Prison Release Reoffender (PRR) is another Florida Recidivism Statute that authorizes a judge, not a jury to make factual determinations based on preponderance of evidence standard and is currently under review in the Florida Supreme Court. See, *Maye v. State,* 368 So. 3d 531 (Fla. 6th DCA 2023).

The HFO statute allows the state attorney to establish by a preponderance of the evidence that a defendant is a habitual felony offender.

Thus, a judge is authorized by statute 775.084 to sentence defendant to double the statutory maximum sentence for the offense of conviction.

Therefore, Fla. Stat. 775.084 is unconstitutional on its face because it makes no provision for jury to decide facts necessary to satisfy the "certain circumstances" requirement in order to enhance the

sentence beyond the statutory maximum and instead, gives the judge authority to do so by a preponderance of the evidence.

D. Section 775.084 is unconstitutional as applied to petitioner

The courts imposition of section 775.084 to petitioner in this case violated Fifth and Sixth Amendments to the United States Constitution. It is indisputable that the trial judge, not the jury, found the facts necessary to increase petitioner's maximum sentence from 15 years to 30 years in prison. The judge, by a preponderance of the evidence decided petitioner had met the "certain circumstances" requirements of statute 775.084, instead of by a jury beyond a reasonable doubt as outlined in *Apprendi, and Blakely v Washington*, 542 U.S. 296 (2004) (In other words the statutory maximum is the maximum a judge may impose "without any additional findings." Id. at 304. See also, *Alleyne v. United States*, 570 U.S. 99 (2013) and *Erlinger v. United States*, 602 U.S. 821 (2024)(Do no more than determine what crime, with what elements, the defendant was convicted of) Id at 838

Therefore, it is clear it is unconstitutional to apply an HFO enhancement by letting a judge, not a jury, make factual determinations by a preponderance of evidence standard.

E. *Erlinger* clearly defines, *Apprendi, Blakely, Alleyne,* and others, showing Fla. Stat. 775.084 does not operate pursuant to Fifth and Sixth Amendment Guarantees.

Even under *Almendarez-Torres* exception, a sentencing judge can find only two facts: 1) That the defendant has a prior conviction and 2) The then existing statutory elements of that offense. *Erlinger* at 1854. No more is allowed. There is no authority for additional fact finding that is "Derivative' from prior conviction. The date of release fact, while the state may argue that the records that establish a release date speak for themselves and are straight forward, that it cost too much to utilize a jury for this type of judicial resources and resources in general, these considerations were also rejected in *Erlinger.* the Court Stated:

> "We do not question amicus's assessment that in many cases the occasions inquiry will be 'straightforward'. Often, a defendant's past offenses will be different enough and separated by enough time and space that there is little question he committed them on separate occasions. But none of that means a judge rather that a jury should make the call

there is no efficiency exception to the Fifth and Sixth Amendments."

Furthermore, this Court stated, "The jury trial may never have been efficient." It may require assembling a group of the defendant's peers to resolve unanimously even seemingly straightforward factual questions under a daunting reasonable doubt standard." Id at 1860

F. *Erlinger's* "separate occasions" is materially yoked to the "certain circumstances" requirement found in Florida Statute 775.084.

[1] The Federal ACCA and Florida's HFO statutes both require specific points in time, space, dates, and or jurisdictions to be determined, which [2] are factual determinations subject to the Fifth and Sixth Amendments, and [3] both of these statutes rely on those factual determinations, whether "separate occasions", or "certain circumstances" to be met in order to impose their respective statutes authority, and lastly [4] this Court's various rulings over the last couple of decades have been consistent in that a jury, not a judge must make these factual determinations to operate under the Fifth and Sixth Amendments.

Thus, since "separate occasions" and "certain circumstances" both involve determining additional facts that revolve around "time and space" (*Erlinger* at 1856), they are materially yoked and there are no set of circumstances in which Fla. Stat. 775.084 can be constitutionally applied.

G. Florida's misguided interpretation of *Apprendi.*

Florida courts rely on *Apprendi* and *Almendarez-Torres* exception to uphold Florida's recidivism statutes. See, *Maye v. State,* 368 So 3d 531 (Fla. 6th DCA 2023), Rev. Granted, 2024 wl179683 (Fla. April 25, 2024)(Date of Release is ministerial in nature and does not require jury findings); *Simmons v. State,* 332 So 3d 1129, 1131 (Fla. 5th DCA 2022)(Judge is performing a ministerial act that does not require a jury finding); *Williams v. State,* 143 So 3d 1129, 1131 (Fla. 1st DCA 2014) (Release date relates to fact of prior conviction.)

In *Tillman v. State,* 900 So 2d 633 (Fla. 2nd DCA 2005); the court rejected an argument that the decisions in *Apprendi* and *Blakely;* entitled the defendant to a jury determination of the facts necessary to impose a habitual felony offender sentence. See also, *Jones v State,* 791 So 2d 580 (Fla. 1st DCA 2001)(Court rejects *Apprendi* challenge to

habitual felony offender statue.); *Saldo v. State* 789 So 2d 1150 (FLA. 3rd. DCA 2001) (*Apprendi* does not apply to habitual felony offender sentencing even if the decision in *Apprendi* apply retroactively.)

The Court in *Calloway v State,* 914 So 2d 12(Fla. 2nd DCA 2005), at least recognized that the "certain circumstances" requirement, such as date of release is not a bare fact of prior conviction and states as follows: "It is clear that sentencing enhancement under various provisions of the habitual offender statute meet the requirement of *Apprendi* and *Blakely* because the enhancements are based solely on prior convictions." *Calloway,* 914 So 2d at 14. The Court Continued:

> "While we recognize that the fact *Calloway's* date of release from his prior prison sentence is not the same as a bare fact of a prior conviction, we conclude that it is directly derivative of a prior conviction and therefore does not implicate Sixth Amendment Protections." ID

Lastly, twenty five years later, Florida Courts still turn a blind eye to this courts multiple rulings on the Fifth and Sixth Amendment Protections in regards to sentencing enhancements as seen from this decision made on petitioner's Rule 3.800(a) Motion to Correct Illegal Sentence which states as follows:

"The determination that a prior conviction exists necessarily includes the question whether that conviction has been pardoned or set aside. The determination that a prior conviction exists also includes the relevant historical facts about the conviction, the sentence punishment imposed, and the date of the defendant's end of sentence or release from supervision."

Luton v. State, 934 So 2d 7 at 10." See Appendix B

It is clear from this court's decision in *Erlinger*, "[W]e have reiterated this limit on the scope of [The Exception] 'over and over', to the point of 'downright tedium'" Id. at 838. Thus, rejecting everything decided in *Luton.* Thus, Florida's "misguided interpretation" of *Apprendi* can be seen as the linchpin of Florida's Recidivism Statutes.

H. Florida Rule of Criminal Procedure 3.800(a), is the proper vehicle for appeal.

Fl.R.Crim.P., 3.800(a)(1), "Allows that a court at any time correct an illegal sentence imposed by it..."

Also, Florida Appellate Practice Eight Edition under ([§9.7] appeals from Illegal Sentence)(F.S. 924.06(1)(d) and Fla. R. App. P. 9.140(b)(1)(E) Authorize appeals from "Illegal" sentences. An Illegal sentence may also

be challenged under Fla. R. Crim. P. 3.800(a), and an appeal from the denial of a Rule 3.800(a) Motion may be taken under Rule 9.140(b)(1)(D). "To be illegal within the meaning of Rule 3.800(a) the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances." Blakely v. State, 746 So 2d 1182, 1186-1187 (Fla. 4th DCA 1999). See also Williams v. State, 957 So 2d 600(Fla. 2007). Illegal sentences are those that (1) Exceed the statutory maximum punishment for the degree of offense contained in F.S. 775.082; (2) are unlawfully increased after they were imposed; (3) Fail to grant credit for time served (When supported by the record) Before imposition of sentence; (4) Impose a Habitual Offender sentence for an offense that is not subject to Habitualization as a matter of law; or (5) Impose enhanced sentences or reclassify offenses invalidly, Austin v. State, 756 So 2d. 1080 (FLA. 4th DCA 2000); Blakely.

It is clear from the numerous cases interpreting the Fifth and Sixth Amendments from this Court even some Florida decisions such as *Poole*, which states as follows:

"It is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to

which a criminal defendant is exposed. It is equally clear that such facts must be established by Proof Beyond a Reasonable Doubt. The only exception to this rule is "The fact of a prior conviction." *State v. Poole*, 297 So 3d. 487, 498 (FLA. 2020). Florida's "HFO" statue has been unconstitutional since its inception and therefore, no judge has had the right to inflict a sentence that directly opposes the Fifth and Sixth amendment rights of petitioner. Lastly, "The court has also held that "claims of error under *Apprendi* and *Blakely* are cognizable in a rule 3.800(a) Motion." *Plott v. State* 148 So 3d 90, 95 (FLA. 2014)

I. Certiorari Relief Under "AEDPA"

"The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) sharply limits the power of Federal Habeas Courts to review state criminal convictions. This statute permits relief only when there is "No possibility fair-minded jurists could disagree that the state courts decision conflicts with this court's precedents". *Harrington v. Richter*, 562 U.S. 86, 102; 131 S. Ct. 770; 178 L Ed. 2d. 624 (2011).

Given this Courts now long standing, Fifth and Sixth Amendment jurisprudence, no fair-minded jurists could disagree that Florida courts

have no authority to expand or otherwise invent, an exception to the Rule announced in *Apprendi* and or *Erlinger.*

J. Petitioner is entitled to a retroactive application and De Novo Resentencing under fundamental fairness.

Petitioner does not believe he has to rely solely on a retroactive application of *Erlinger's* decision as the Fifth and Sixth Amendment rights have been in place since the Constitutions completion, and at the very least since being defined to the nation in *Apprendi's* definition of said Amendments and how they apply to enhanced sentences.

Also, Florida courts have recognized that, apart from the traditional test for retroactivity analysis established in its case law, fundamental fairness may be a separate basis for applying the decisions of this Court retroactively. *Mosley v. State,* 209 So 3d 1248, 1274-1275 (FLA. 2016). In *Mosley,* the court held that, where the fundamental right to a trial by jury under both the United States Constitution and the Florida Constitution is implicated, fundamental fairness requires retroactive application of a new decision of the United States Supreme Court. 1d at 1275.

Here fundamental fairness might also require a retroactive application of *Erlinger* with this Courts conclusion that the "Certain Circumstances" criteria makes statute 775.084 unconstitutional on its face and as applied to Derting. As in *Mosley,* the fundamental right to a trial by a jury under the United States and Florida Constitutions is at issue in this case. In *Erlinger,* this Court noted that the principles addressed in *Apprendi* and its progeny are not mere "Procedural formalit[ies] but fundamental reservation[s] of power to the American people. By requiring the executive branch to prove its charges to a unanimous jury beyond a reasonable doubt, the Fifth and Sixth Amendments seek to mitigate the risk of prosecutorial overreach and misconduct; including the pursuit of pretended offenses and arbitrary convictions. "144 S. Ct. at 1850 (Internal quotations omitted).

This court conducted an exhaustive historical analysis of the constitutional right to trial by jury. Id at 1848-1850, 1856-1859. Based on that analysis; this court concluded that the founding fathers of the United States Constitution "saw representative government and trial by jury as "the heart and lungs of liberty." Id at 1848.

In light of the extraordinary importance the founding fathers placed on the right to trial by jury, fundamental principles of fairness requires,

those unconstitutionally sentenced pursuant to the HFO statute be entitled to post-conviction relief and a De Novo resentencing hearing. It makes no logical sense to deny relief to defendants who were sentenced pursuant to an unconstitutional statue simply because the courts were late to recognize that the statute was actually unconstitutional from the date it was originally enacted.

K. Florida courts employ a harmless error analysis to justify upholding a sentencing enhancement under Fl. Stat. 775.084

Florida Statue 775.084 is unconstitutional on its face and as applied to tens of thousands of Florida defendants. Instead of admitting as such and changing the statue to comply with the demands of the Fifth and Sixth Amendment guarantee's, Florida has decided to employ a harmless error analysis to uphold a sentence that a jury never authorized a court to give.

This analysis is done by using the very Shepard Documents this Court has stated could only be used to determine, "what crime and with what elements". *Erlinger* at 1854.

This Court has also stated that Shepard Documents are prone to mistakes. Id at 18 that being said, the courts cannot use those materials to rule that a jury would unanimously find petitioner qualifies for an enhanced sentence. Especially since there are multiple discrepancies in the record as can be seen by the Judges comments in this case at sentencing.

Lastly, how can a harmless error analysis remove the taint of a judge imposing a sentence that the jury did not authorize. The power to punish resides solely with a jury. The information filed on Petitioner was Fla. Stat. 893.13, sales and delivery, a second degree felony punishable up to 15 years. Based on the Guilty verdict by the jury the court was authorized to sentence petitioner to 15 years maximum. The information made no mention of applying Fla. Stat. 775.084 to double the sentence (30 years). Therefore, to employ a harmless error analysis would further taint the demands of the Fifth and Sixth Amendments not remove it.

CONCLUSION

As seen from the plain language of Fla. Stat. 775.084 there is no provision for a jury to determine the "certain circumstances" requirements beyond a reasonable doubt.

Instead, the statute allows a judge to determine the "certain circumstances" necessary to enact the statutes power by a preponderance of the evidence.

Contrary to Florida's opinion, *Appredi* applies to petitioners sentencing in that a judge had no authority to expand "[The] fact on a prior conviction" to mean [Any] fact related to a prior conviction and petitioner humbly request that this court grant this Writ of Certiorari.

STATEMENT OF COMPLIANCE

The Brief is in compliance with Federal Rules of Appellate Procedure Rule 32 (a) (4) Paper Size, Line Spacing, and Margins, and (5) Typeface, (A) 14-point, and (7)(B) no more than 13,000 words. This brief is

/S/

Christopher Derting, DC # 121880

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER J. DERTING - PETITIONER

VS.

STATE OF FLORIDA, - RESPONDENT(S)

PROOF OF SERVICE

I, CHRISTOPHER J. DERTING, do swear or declare that on this date, November 25, 2025, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *in forma pauperis* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Office of the Attorney General, The Capitol PL-01, Tallahassee, FL. 32399-1050

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 25, 2025

/S/ _____

Christopher J. Derting, DC #121880