No._____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER DERTING,

Petitioner,

vs.

SECRETARY DEPT. OF CORRECTIONS, et., al.

Respondant,

_____/

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

APPENDIX

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APPENDIX A

5th District Court of Appeal of Florida, per curium Affirmed

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2025-0515
LT Case No. 2008-CF-010810-A

CHRISTOPHER JOHN DERTING,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.800 Appeal from the Circuit Court for Duval County.
R. Anthony Salem, Judge.

Christopher John Derting, Lawtey, pro se.

James Uthmeier, Attorney General, and Amanda Uwaibi, Assistant Attorney General, Tallahassee, for Appellee.

September 9, 2025

PER CURIAM.

AFFIRMED.

LAMBERT, HARRIS, and PRATT, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

APPENDIX H

Constitutional and Statutory Provisions Involved

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pages

Fifth Amendment United States Constitution – "Nor be deprived of life, liberty, or property, without due process of law."....

Sixth Amendment United States Constitution – "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury..."....

Article 1, Section 16 and 22 Florida Constitution~ "The Florida Constitution, Article 1, Section 16, provides that in all criminal prosecutions the accused... Shall have the right to... A speedy and public trial by an impartial jury. "Article 1, Section 22 of the Florida Constitution, although not specifically directed to criminal cases, provides that the "Right of trial by jury shall be secure to all and remain inviolate."....

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).....

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.....

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.....

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 judgement and discretion".....

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.....

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.....

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.....

Erlinger "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.....

Erlinger "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.....

"time and space" (*Erlinger* at 1856).....

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.....

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.....

Luton v. State, 934 So 2d _____ at 10. "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."

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.

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

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).....

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);.....

"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).....

"The court has also held that "claims of error under *Apprendi* and *Blakely* are cognizable in a rule 3.800(a) Motion." *Platt v. State* 148 So 3d 90, 95 (FLA. 2014).....

"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).....

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.....

Erlinger "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).....

Erlinger "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.....

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