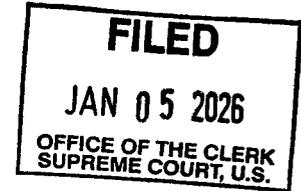


25-6902 ORIGINAL
NO: _____

IN THE SUPREME COURT OF THE UNITED STATES

ALEJANDRO FERRER
DOC# PETITIONER



Vs.

STATE OF FLORIDA
RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

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Pro se

QUESTION PRESENTED

Whether the Florida Legislature's removal of the jury from the fact finding process that authorized a judge to determine if it was necessary to protect the public by imposing an enhanced sentence above the Statutory maximum as a Habitual Felony Offender in violation of the Fifth Amendment's Due Process Clause, the Sixth Amendment's notice and jury trial guarantees and the Fourteenth Amendment as applied to the States?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

This case follows the decisions by this Court in *Apprendi v. New Jersey*, 530 US 466 (2000); *Blakely v. Washington*, 542 US 296 (2004) and, *Erlinger v. United States*, 602 U.S. 821 (2024).

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at (Appendix A) to the petition, and has not been designated for publication.

JURISDICTION

The date on which the highest state court decided my case was October 15, 2025. A copy of the decision is attached hereto as (Appendix A)

The jurisdiction of this Court is invoked under Title 28 U.S.C. §1257

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article V, “No person shall be held. . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in a criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law. . .”.

Article VI, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense”.

Article XIV, “. . . nor shall any State deprive any person of life, liberty, and property without due process of law”

STATEMENT OF THE CASE AND FACTS

Alejandro Ferrer plead Guilty to Attempted Second Degree Murder, Possession of a Firearm by a Convicted Felon, two counts of Aggravated Assault with a firearm, Grand Theft third degree, and Aggravated Battery with a Deadly Weapon. April 27, 2006, Ferrer was sentenced pursuant to a negotiated plea, to ten years State Prison with a ten-year firearm minimum mandatory, followed by two years as a Habitual Violent Felony Offender. (Appendix B written sentences dated March 13, 2006). The State waived the 10-20-Life enhancement in the original sentencing proceeding. See *Hill v. State*, 403 So 3d 505 (Fla. App. 1st Dist. 2025)

Ferrer completed his prison sentence on September 2, 2014. On June 16, 2016, Ferrer's probation officer executed a probation violation affidavit alleging that Ferrer changed his residence without consent of the probation officer, that his whereabouts were unknown, and that he failed to report to probation for the month of June 2016. (Appendix C at 2)

The probation affidavit was amended twice. On September 9, 2019, the affidavit to add the additional violation that Ferrer left Miami-Dade County and shot and killed Hasiel Gonzalez Rodriguez

(“Rodriguez”) in Vance County, North Carolina. On December, 10, 2020, the Affidavit was again amended to allege that Ferrer left his county of residence without permission and went to Nicaragua.

The Trial Court made findings of fact after hearing the State’s evidence, and concluded that a preponderance of the evidence demonstrated that on or about January 22, 2017, Ferrer murdered Rodriguez. In addition, the Court concluded that Ferrer left Miami-Dade County on or about June 2016 without consent of his Probation officer, thus absconding for supervision. (Appendix C)

As to sentencing, the Circuit Court made the following findings;

“Ferrer had crimes over the years and received second and third chances. Most relevantly, Ferrer was given probation on the underlying offenses in this case, despite the fact he had demonstrated an utter disregard for the victim’s safety. Yet, less than two years after his release from prison, he violated probation by absconding and then Murdered Rodriguez. Nothing this Court can do will bring Rodriguez back to his family. But this Court can appropriately punish Ferrer for the serious, violent offenses for which he was placed on probation and incapacitate him for a long period of time to protect others whom he would hurt. The Court revokes Ferrer’s probation due to his willful and substantial violation of conditions K-1, L-1, and K-4 of his probation. Based on the seriousness of the crimes for which Ferrer was on probation, and the manner in which he violated this probation, the Court revokes his probation and sentences Ferrer to credit for each count of aggravated assault with a firearm, 15 years state prison for possession of a firearm by a convicted

felon, credit time served for grand theft in the third degree, 15 years in state prison for aggravated battery with a deadly weapon, and life in prison for attempted second degree murder with a firearm. All counts to run concurrent but not coterminous, with credit for all time Ferrer has already serve in jail on this case.”
(Appendix C at 20-21)

Ferrer filed a timely notice of appeal to the Third District Court of Appeals of Florida. Prior to filing his initial brief he filed a motion to correct sentence pursuant to Fla. R. Crim. P 3.800(b)(2) which argued that his enhanced sentence violated the rule announced in *Erlinger v. United States*, 602 U.S. 821 (2024), because his sentence exceeded the statutory maximum based on facts found by the sentencing judge, not a jury. (Appendix D, Rule 3.800(b)(2))

The motion was denied:

Ferrer entered a plea of guilty to the information which contained the allegations which qualified Ferrer for sentencing under Florida’s 10-20-Life statute. It appears more than a little pointless to ask a jury to find that Ferrer committed attempted second degree murder with a firearm, causing serious bodily injury, when those are the facts to which Ferrer admitted when he plead guilty.
(Appendix E order denying rule 3.800(b)(2))

On direct appeal, Ferrer raised the claim in his initial brief arguing that there was no concession in the record that he was a danger to the public, or that an enhanced Habitual Violent Felony

Offender sentence was necessary to protect the public. (Appendix F, direct appeal briefs)

The third District Court of Appeal affirmed the judgment revoking probation and the enhanced Life sentence in an unpublished opinion. (Appendix A).

This petition for Writ of certiorari follows:

REASONS FOR GRANTING THE WRIT

The Florida Statutes authorize a prison term of not more than Thirty (30) years for a felony in the First Degree See § 775.082(3)(b)1 *Fla. Stat.* (2003).

At sentencing, the following took place.

Ms. Diamond: Yes, Your Honor. So, the defendant scores 157.95 months in state prison which is 13.16 years to life. There's a 25 year firearm minimum, mandatory and a 15 year minimum mandatory as a habitual violent offender. On March 13, 2006, the defendant pled guilty to one count of attempted second-degree murder with a firearm, possession with a firearm by a convicted felon, two counts of aggravated assault with a firearm, grand theft, in the third degree, and aggravated battery with a deadly weapon. The weapon would be a firearm. He, I believe, got a furlough so he was sentenced to life with a mitigation dated on April 27, 2006 where he surrendered. He was re-sentenced. He accepted a plea of ten years in state prison with a ten year firearm minimum mandatory followed by two years of reporting probation.

^{e3} That stems from the underlying case on July 18, 2018. So around 1:00 a.m., the defendant was seen

burglarizing the residence of Jose Perez. Around 9:00 p.m., that same day, this happened in a trailer park, where I believe Mr. Ferrer also lived at the time, so the parties were known to one another. So around 9:00p.m. that same day, the defendant came up upon a fight between the individuals who saw him and the other people he was with, burglarizing the residence, and the owner, Jose Perez, of the residence. So, the defendant pulled a gun of (sic) Jose Perez, Jose Rodriguez, Fransciso Miranda, and Rolando Culaoe and threatened to kill them all. Then he used the gun he was holding to batter Fransciso Miranda on the right side of his face causing lacerations to the right side of his chin. That is where the aggravated battery accounts arises from. The defendant then pointed the gun at Jose Rodriguez head and again, he said he was going to kill everyone who was present there. Jose Rodriguez was able to run away a short distance to the entry of his own trailer and as he shut the door, the defendant fired into the trailer, striking him in the leg, and going through his left leg. So that is the basis of the attempted murder.

Inside the trailer, Dolce Diaz was inside there. I believe that's the mother of Jose Rodriguez calling 911, and I do have - - unfortunately, I would play, your honor, that tape but it's a cassette tape. I do have a copy of the certified court translation form from that.

The Court: Sure.

Ms. Diamond: I'll pass this up. Essentially, it's just detailing that her son was shot through the door of the trailer. So as a result of that, so those are all the charges that the defendant did plead guilty for and was placed on probation in this case. During his incarceration, I believe we are trying to get the prior exhibits right now. The State previously filed the defendant's disciplinary reports and the time and crime reports from his prison sentence with the court. I don't know if, Your Honor, I don't think you've had a chance to review that?

The Court: I have not.

Ms. Diamond: So, I'm going to just pass up the certification of records showing those disciplinary reports,

which I believe has already been filed, but I have another certified copy as well. During his incarceration, he was disciplined for possession of a weapon on three occasions and possession of a cellphone on seven occasions. He was charged criminally with two of those possessions, one of which he was held after his initial release date in this case which, you Honor's aware of since there was a discussion of when his probation started, where it was in September of February when he was ultimately released from that possession of cellphone case. In addition, he also obtained disciplinary violations for fighting, narcotics, lying, and mail violations as well as just refusing to listen, L &L in custody. I think more important and what's relevant to the case here are both the possession of a weapon and the cellphone. And the cellphone is relevant here since part of the testimony that was elicited here through Amanda Perez was that the defendant was part of although the gang, he was apart of, his friends, in sending these cellphones to prison and they were found in a hollowed out book along with the murder weapon. So, the defendant was actively engaged in this during his time in prison so this corroborates what Amanda Perez testified to here as well. I'm not going to go through everything again. Your Honor, has already found him in violation and made your findings and is well aware of the facts leading up to Hacil's Murder.

The Court: Does he have any priors other than the ones he's on probation for?"

Ms. Diamond: Yes, I can pass up his local priors. Just for the record, I have highlighted the ones he was actually convicted of as an adult - - no, actually convicted of not just the arrests.

The Court: Okay.

Ms. Diamond: And then I blocked out this date. So, he has a number of juvenile arrests and then his adult ones as well but the juvenile ones don't - - I think it's important to note that he was often in possession of a firearm both based on his priors and the testimony in this case.

The Court: Got it.

Ms. Diamond: So despite being a convicted felon at the time of this case that he pled guilty to in 200⁰⁶~~3~~, despite being a convicted felon, having already been to prison for a strong armed robbery, he was carrying a firearm that he used and threatened to shoot multiple people and actually did shoot Jose Rodriguez.

Then we have 13 years after that incident, after he served ten years in prison, is when he was seen posting on his own Facebook account, having his friends take pictures of him, holding what ultimately became the murder weapon in this case. So I think it is particularly important to show the defendant does not follow the rules. He disregards the law at all times. He knew he was not allowed to be in possession of a firearm. That can't even be something he could say he was mistaken about having already been sentenced for that exact count and despite that, he was known to have firearms, known to hide them on property, and- -

The Court: I just want to make something clear for the record. You're making the argument about the firearms. Solely for the purposes of sentencing, I cannot violate him based on the firearms.

Ms. Diamond: Yes, No, No - -

The Court: There's a whole section in my order about that.

Ms. Diamond: You have already found his violations.

The Court: Right.

Ms. Diamond: This is purely to show he's a danger and that going forward, there is nothing to show that he would no get - - if he was to get out of prison, obtain a firearm and use it again because he's already done that on at least two occasions.

The Court: You just wanted the record to be clear there's a section in my order about that.

Ms. Diamond: So, at this time, would you like to proceed with Defense or the victim's family member?

* * * *

The Court: Let me first say to Hacil's family that I'm sorry I can't return him to you. I hope that these proceedings

and maybe there will be something else in North Carolina, I hope it gives you some peace. It's not gonna bring you closure but hopefully it just gives you some peace that at least some justice is done for your family member. I acknowledge that apparently you had a terrible childhood Mr. Ferrer. I mean that's the way you reported it to both of you doctors but that wasn't Hacil's fault. You have now done three prison sentences and they haven't changed you and you were out less than two years before and I know and I know you and I disagree but I believe you murdered Mr. Rodriguez and while I appreciated Doctor Klein's testimony, it isn't a prison's job to fix you. The job of the judicial system, the criminal justice system is to punish and not to fix you. And the truth is I don't see how anything, how the prison sentence, regardless of it's length, would fix you or what would possibly fix a 44 year old man who continues to commit violent offenses. You've spent a lot of time in prison already and it hasn't had any effect on you. The bottom line is I don't see why anybody else should pay for this. Hacil already paid the ultimate price after you came out of prison where it didn't make any difference to you.

The Defendant: it had nothing to do with this hearing, you honor.

The Court: Whether North Carolina prosecutes you or not, I'm gonna sentence you today on the whole of your criminal history. So at this time, I am revoking your probation and I'm sentencing you as follows, I'm sentencing you for credit time served for each count of aggravated assault with a firearm, 15 years in state prison for possession of a firearm by a convicted felon, credit time served for the grant theft in the third-degree, 15 years in state prison for possession of aggravated battery with a deadly weapon, and life in prison for attempted second degree murder with a firearm. All count are to run concurrent but not coterminous and you will get credit for all the time you served in jail. Should I appoint for Public Defender office for appellate purposes?

Ms. Pitchik: Yes please, judge.

The Court: Okay. There is an order, Keish?

Ms. Pitchik: The only additional request I have, judge is I would like to be able to make a copy of the order so I can't provide it - -

* * * *

Ms. Diamond: *And on this matter, does he remain sentences as a habitual violent offender?*

The Court: *Yes. Anything else today? . . .* (Appendix G, 1-94)

Ferrer entered a plea to the offense of attempted second-degree murder with a firearm, a second-degree felony. § 782.04(2), Fla. Stat. (2003); § 777.04(4)(c), Fla. Stat (2003). A brief overview of the statutory scheme is helpful to provide context for the facts of this case. Because Ferrer used a firearm during the commission of the offense, his conviction was reclassified from a second-degree felony to a first-degree felony under section 775.087(1), Florida Statutes (2003). The maximum sentence for a second-degree felony is fifteen years, and the maximum sentence for a first-degree felony is thirty years. § 775.082(3)(b)-(c), Fla. Stat. (2003). The instant offense is not one that authorizes a life sentence, Ferrer's maximum sentence is thirty years without any additional findings. *Id.*

Mr. Ferrer's sentence as a (HVFO) exceeds the statutory maximum of thirty years based on a factual determination made by the sentencing judge not a jury, and pursuant to *Apprendi v. New*

Jersey, 530 U.S. 466, 490 (2000) violates Ferrer's right to trial by jury, proof beyond a reasonable doubt, and is Unconstitutional.

Florida's habitual Violent Felony Offender statute §775.084 Fla. Stat. (2003) was designed to provide enhanced punishment for recidivists who have been convicted of two or more felonies, one within five years of the offenses currently before the Court for sentencing.

The Statute reads:

§ 775.084. Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms. As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided 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 sentenced 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 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully

imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony 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 s. 893.13 relating to the purchase or the 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.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

* * * *

(4) (a) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 30.

3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(e) If the court finds, pursuant to paragraph (3)(a) or paragraph (3)(c), that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section. (emphasis added)

Florida's Legislature held that the primary purpose of the habitual felony offender statute is to incarcerate Habitual Violent Felony offenders for extended terms See § 775.0841, *Fla. Stat.* (2021).

The Florida Supreme Court recognized that, by enacting sections §775.084 and §775.0841 of the Florida Statutes, "the legislature intended to provide for the incarceration of repeat felony offenders for longer periods of time. . . . This is accomplished by enlargement of the maximum sentences that can be imposed when a defendant is found to be a habitual felon or a habitual violent felon." *Daniels v. State*, 595 So. 2d 952, 954 (Fla. 1992).

Habitual Violent Felony Offender sentences are enhanced sentences imposed in an attempt "to protect society from habitual criminals who persist in the commission of crime after having been convicted and punished for crimes previously committed." *State v. Peterson*, 667 So. 2d 199, 200 (Fla. 1996) (quoting *Peterson v. State*, 651 So. 2d 781, 782-83 (Fla. 4th DCA1995)). In *Hernandez-Molina v. State*, 860 So. 2d 483 (Fla. 4th DCA 2003), the Fourth District Court of Appeals concluded that the subject of the Act was sentencing, and its purpose was protection of the public through increased sentences. See *id.* at 489.

The Statute operates by allowing a judge to determine which offenders will be sentenced under the habitual felony offender statute after finding the offender qualifies for the enhanced sentence. The

statute is permissive, not mandatory, See *State v. Hudson*, 698 So. 2d 831, 832 (Fla. 1997); *Burdick v. State*, 594 So. 2d 267, 267-68 (Fla. 1992), and the Florida Supreme Court has specifically stated that under "section §775.084, the sentencing court must sentence a Habitual Violent Felony offender as provided, *unless* the court decides that 'sentence under this section is not necessary for the protection of the public.'" *Mack v. State*, 823 So. 2d 746, 751 (Fla. 2002) (quoting § 775.084(4)(e), *Fla. Stat.* (2021)); *King v. State*, 681 So. 2d 1136, 1138-39 (Fla. 1996).

Further, "if the court finds that a habitual Violent Felony Offender sentence is not necessary, 'sentencing shall be imposed without regard to this section.'" *Id.* (quoting § 775.084(4)(e), *Fla. Stat.* (2003)).

When a sentencing court has determined that a defendant meets the habitual violent felony offender criteria, "it must make the decision whether to sentence him or her as such and must either impose a Habitual Violent Felony offender sentence or impose sentence without regard to the Habitual Violent Felony offender statute." *Id. State v. Matthews*, 891 So2d 479, 490 (Fla. 2002).

At his initial sentencing, the Court, and the State determined it was not necessary to protect the public by imposing an enhanced sentence as a Violent Habitual Offender, by initially imposing a 10 year term as a Habitual Violent Felony Offender to be followed by two (2) years' probation. (Appendix II) Additionally, the State waived the provisions of the 10-20-Life statute. See *Hill v. State*, 403 So. 3d 505 (Fla. App. 1st Dist. 2025).

In it's resentencing memorandum, the judge held; "Ferrer has crimes over the years and received second and third chances. Most relevantly, Ferrer was given probation on the underlying offenses in this case, despite the fact he had demonstrated an utter disregard for the victim's safety. Yet, less than two years after his release from prison, he violated probation by absconding and then Murdered Rodriguez. Nothing this Court can do will bring Rodriguez back to family. But this Court can appropriately punish Ferrer for the serious, violent offenses for which he was placed on probation and incapacitate him for a long period of time to protect others whom he would hurt. The Court revokes Ferrer's probation due to his willful and substantial violation of conditions K-1, L-1, and K-4 of his probation. Based on the seriousness of the crimes for which Ferrer was on probation, and the matter in which he violated this probation, the Court revokes his probation and sentences Ferrer to credit for each count of aggravated assault with a firearm, 15 years state prison for possession of a firearm by a convicted felon, credit time served for grand theft in the third degree, 15 years in state prison for aggravated battery with a deadly weapon, and life in prison for attempted second degree murder with a firearm. All counts to run concurrent but not coterminous, with credit for all time Ferrer has already serve in jail on this case."

(Appendix III at 20-21)

The Life sentence exceeded the statutory maximums for the first degree felony, based on a factual determination that the public needed to be protected from the Petitioner's criminal behavior. In this case the Judge made factual determination that authorized an enhanced sentence as a Habitual Violent Felony Offender, then imposed a sentence above the statutory maximum for the offense the Defendant plead guilty to.

In June of 2000, this Court issued *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) which held: "other than the fact of a prior conviction, any fact that increases the penalty for a crime must be submitted to a jury, and proved beyond a reasonable doubt." This ruling rendered Florida's habitual violent felony offender statute unconstitutional because the Statute authorizes a judge, not a jury, to make factual finding that the enhanced sentence is necessary to protect the public by imposing a sentence above the statutory maximum.

Since *Apprendi*, Florida has refused to apply this Court's ruling to its enhanced sentencing statutes. Florida alleges that the enhanced habitual felony offender sentence is based on prior

convictions alone, and that the protection of the public finding is not necessary unless the judge chooses not to impose an enhanced Habitual Violent Felony offender sentence. See, *State v. Collins*, 985 So2d 985 (Fla. 2008); *St. Louis v. State*, 985 So 2d 16 (Fla. App. 4th Dist. 2008) (The Florida statute does not require a protection of the public finding as a prerequisite to Habitual Violent Felony offender sentencing, as opposed to *Kaua v. Frank*, 436 F.3d 1057 (9th Cir. 2006). Rather, a judge must make the finding to except an otherwise qualified defendant from Habitual Violent Felony offender sentencing); also see, *O'Neal v. State*, 862 So. 2d 91 (Fla. 2d DCA2003); *Sampson v. State*, 832 So. 2d 251, 253 (Fla. 5th DCA2002)). Generally, all the appeal courts of Florida follow *St. Louis*.

Collins, and *St. Louis* was wrongly decided, every Florida Supreme Court decision prior to *Apprendi* held that the enhanced sentence is permissive, not mandatory. *Mack*, *Burdick*, *King*. When a judge finds that it is not necessary to protect the public, a non-Habitual Violent Felony offender sentence could be imposed, *Geohagen v. State*, 639 So. 2d 611, 612 (Fla. 1994); *State v. Rinkins*, 646 So. 2d 727, 729 (Fla. 1994).

The enhanced sentence does not automatically follow once a defendant is found to have a requisite prior convictions because the statute is permissive. *Burdick v. State*, 594 So. 2d 267 (Fla. 1992). There is a two-step process that the sentencing judge must carry out before imposing an enhanced sentence. First, the judge determines whether a defendant qualifies as a habitual violent offender. §775.084(3), *Fla. Stat.* (2003).

This determination is ministerial rather than discretionary. *King v. State*, 597 So. 2d 309, 313 (Fla. 2d DCA), *review denied*, 602 So. 2d 942 (Fla. 1992). Second, the judge must decide whether the defendant will be sentenced as a habitual felony offender. *Id.*; §775.084(4)(c), *Fla. Stat.* (2021). The trial court's determination as to whether to impose an enhanced term of imprisonment as a Habitual Violent Felony offender has never been based solely on a finding of a prior felony conviction. Florida has, for the past twenty five years avoided applying *Apprendi* to Habitual Violent Felony offender sentencing under the pretense of prior convictions. *Matthews, Mack, Hudson*.

Additionally, the State of Florida has avoided the constitutional question outlawed by *Apprendi* when the statute authorized the judge

to find that an enhanced sentence is not necessary to protect the public when no enhanced sentence is imposed. See §775.084 (4)(e).

The theory advanced by the State is disingenuous. Unlike mandatory sentence enhancements based solely on specific facts. The violent habitual offender sentence allows a sentencing judge to determine whether it is necessary to protect the public by imposing an enhanced term of imprisonment.

A sentencing court may not enhance a defendant's sentence under the habitual felony offender statute, unless two particularized findings are made by the judge regarding the defendant. The first finding is that the defendant is a "habitual violent felony offender," §775.084(1)(a), that is, a person who has been convicted of two or more felonies or crimes in any other jurisdiction with a term of imprisonment of greater than one year. *Id.* Any felony conviction, including a federal conviction, can be counted. This aspect of the statute falls squarely within the narrow safe harbor for recidivism-based sentencing enhancements. *Almendarez-Torres v United States*, 523 US 224 (1998)

The habitual violent felony offender statute then requires that the court determine whether an enhanced sentence is necessary for

the protection of the public. If the judge finds the enhanced sentence is not necessary for the protection of the public the enhanced sentence will not be imposed, and the Defendant will be sentenced under the guidelines within the statutory maximum. *Geohagen Rinkins Matthews*.

Florida has for the past twenty five years intentionally overlooked the inherent nature of the protection of the public finding by determining that the finding is only necessary when no enhanced sentence is imposed. When a judge imposes an enhanced sentence under the habitual violent offender statute, the judge has necessarily determined the enhanced sentence is necessary to protect the public.

This distinction without a difference defies logic because when a judge imposes an enhanced term of prison, the Court has necessarily determined an enhanced sentence is necessary to protect the public. (i.e., which is the purpose of the statute *Daniel*). *King v. State*, 681 So. 2d 1136 (Fla. 1996).

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]" Amend. VI, U.S. Const. The Fifth Amendment provides that due process be

provided to State criminal defendants pursuant to the Fourteenth Amendment.

Florida's rejection of *Apprendi* as it pertains to enhanced sentences under the Habitual Violent Offender Statute is contrary to clearly established federal law as determined by this Supreme Court. *Erlinger; Blakely*.

Ferrer received a sentence that far exceeded the statutory maximum for his offense of conviction based on numerous facts, including whether it was necessary to protect the public, which was a fact found by the sentencing judge, not a jury relying on proof beyond a reasonable doubt.

Apprendi, interpreted the Sixth Amendment right to mean that, except for 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. Stated another way, "[i]t 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." *Id.*

While *Apprendi's* holding, at first blush, might seem simple enough, the Court revisited the issue four years after its release of *Blakely v. Washington*, 542 U.S. 296 (2004). In that case, the Court clarified that the "statutory maximum for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Id.* at 303. In other words, the statutory maximum is the maximum a judge may impose "without any additional findings." *Id.* at 304.

In 2024 this Court in *Erlinger v. United States*, 602 U.S. 821 (2024), considered whether the already criticized exception for the fact of a prior conviction allowed a judge to determine if "a defendant's past offenses were committed on separate occasions." *Id.* at 825. The Court's answer, unsurprisingly, was decidedly "no." *Id.* at 836-40, 849. But *Erlinger* went further. First, *Erlinger* categorically rejected any expansion of the exception for the fact of a prior conviction.

Instead, the Court insisted that a judge may "do no more . . . than determine what crime, with what elements, the defendant was convicted of." *Id.* at 838.

Apprendi and now *Erlinger* renders Florida's Habitual Violent Felony offender statute unconstitutional because the statute

authorizes a judge to determine, that an enhanced sentence is necessary to protect the public. Where the judge can determine that the enhanced sentence is not necessary for the protection of the public, the jury has been removed from the fact-finding process violating the Fifth and Sixth Amendments to the United States Constitution. *Id, Apprendi; Blakely; Erlinger.*

CONCLUSION

Ferrer has shown that the State of Florida has failed to honor this Court's decision announced in *Apprendi*, and continues to allow the sentencing judge to make protection of the public determinations without a jury. Such a factual finding must be made by a jury not a judge rendering the enhanced life year sentence unconstitutional.

Wherefore Ferrer prays this Court grant Certiorari in this case and make the determination that Florida Legislature removed the jury from the fact finding process in enhanced sentencing proceedings in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

All facts matters and issues herein alleged are true and correct under the penalty of perjury.

This 30 day of December 2025

Alexander Ferrer

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