No.

IN THE SUPREME COURT OF THE UNITED STATES

KURT N. HAUSCH, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a person charged with a felony in state court has the right to trial by a twelve-member of jury under the Sixth Amendment?

PARTIES TO THE PROCEEDING BELOW

In the court whose judgment is sought be reviewed, the parties were:

Kurt N. Hausch

State of Florida

RELATED PROCEEDINGS

Nineteenth Judicial Circuit of Florida:

State v. Hausch, 2023CF001214A (November 20, 2024)

Fourth District Court of Appeal of Florida:

Hausch v. State, 4D2024–2983 (November 13, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Kurt N. Hausch respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is reported as *Hausch v. State*, 425 So. 3d 18 (Fla. 4th DCA 2025) (table). A copy is in the appendix. 1a.

JURISDICTION

The petition seeks review of the decision of Florida's Fourth District Court of Appeal affirming Petitioner's convictions and sentences without written opinion on November 13, 2025, 1a, for which a timely motion for rehearing was denied on December 13, 2025. 2a.

The Florida Supreme Court is "a court of limited jurisdiction," *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (citation omitted), Specifically, it has no jurisdiction to review district court of appeal decisions entered without written opinion. *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Hence, Petitioner could not seek review in that court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

On March 17, 2026, a letter from the Clerk's office reflects that the petition was postmarked March 9, 2026 and was received March 17, 2026. The letter said the petition was being returned because there were errors in the statement of jurisdiction and also in the motion to proceed in forma pauperis, and said the filings should be corrected and resubmitted within 60 days.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury … .

Section 1 of the Fourteenth Amendment:

> … . 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.

Article I, section 22 of the Florida Constitution:

> Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Section 913.10, Florida Statutes:

> Number of jurors.—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

STATEMENT OF THE CASE

Petitioner was charged in the Nineteenth Judicial Circuit of Florida with aggravated battery (a second degree felony) and misdemeanor criminal mischief in an incident involving a dispute between him and another man about a fishing pole at a public park. Both men received cuts — Petitioner on the chest, and the other man on his thumb. Petitioner contended that the other man was the aggressor. Apparently disagreeing with his theory, a six-member jury convicted Petitioner as charged.

The trial court adjudicated Petitioner guilty and sentenced him to 60 months in prison for the aggravated battery and time-served on the misdemeanor.

Petitioner appealed his conviction to Florida's Fourth District Court of Appeal, contending among other things that he was denied his Sixth Amendment to trial by a twelve-member jury. 3a–10a. He acknowledged that this Court had held in *Williams v. Florida*, 399 U.S. 78 (1970), that state court juries as small as six are constitutionally permissible under the Sixth Amendment. 4a.

Petitioner also acknowledged that the issue had not been raised in the trial court, but pointed out that waiver of the

constitutional right of trial by the proper number of jurors must be made personally by the defendant under *Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997) (finding valid defendant's agreement to verdict by five-member jury valid only because made "in a colloquy at issue here, including a personal on-the-record waiver," and sufficient to pass muster under the federal and state constitutions," and his decision was made "toward the end of his trial, after having ample time to analyze the jury and assess the prosecution's case against him," and he "affirmatively chose to proceed with a reduced jury"), and *Wallace v. State*, 722 So. 2d 913 (Fla. 2d DCA 1998) (reversing on grounds of fundamental error where appellant was tried by five-member jury and judge did not inform the defendant of his right to six-person jury). 6a–9a,

The district court of appeal affirmed the convictions and sentences without opinion. 1a. Petitioner moved for rehearing and for issuance of a written opinion so that he could seek review in the state supreme court. The motion was denied. 2a.

REASONS FOR GRANTING THE PETITION

WILLIAMS v. FLORIDA SHOULD BE OVERRULED AND THE SIXTH AMENDMENT RIGHT TO A JURY OF TWELVE SHOULD BE RESTORED.

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury … ."

On its face, it does not define what is meant by a jury. It does not prescribe the number of jurors. It does not say their verdict must be unanimous, or even that a majority must concur with the verdict. It does not say jurors must be laymen.

Given the Amendment's spare wording and absolute silence about these and similar questions, we have no option but to look to "the most likely public understanding of [this] particular provision at the time it was adopted." *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 828 (2010) (Thomas, J., concurring in part) (interpreting Second Amendment). Such "an approach grounded in history imposes limits on the judiciary that are more meaningful than any based on [an] abstract formula." *Obergefell v. Hodges*, 576 U.S. 644, 698 (2015) (Roberts, C.J., dissenting) (internal citation and quotation marks omitted). *See also Dobbs v. Jackson Women's*

Health Org., 597 U.S. 215, 239 (2022) (opinion of Alito, J., for the Court) ("Historical inquiries … are essential whenever we are asked to recognize a new component of the 'liberty' protected by the Due Process Clause because the term 'liberty' alone provides little guidance."); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 321–27 (2023) (Sotomayor, J., dissenting) (surveying understanding of Fourteenth Amendment at the time of adoption); *Consumer Fin. Prot. Bureau v. Cmty. Fin. Services Ass'n of Am., Ltd.*, 601 U.S. 416, 442 (2024) (Kagan, J., concurring) ("Long settled and established practice may have great weight in interpreting constitutional provisions about the operation of government.") (internal quotation marks and citations omitted); *Gamble v. United States*, 587 U.S. 678, 741 (2019) (Gorsuch, J., dissenting) (surveying how term "same offence" in Double Jeopardy Clause was understood at time of adoption); *United States v. Rahimi*, 602 U.S. 680, 715 (2024) (Kavanaugh, J., concurring) ("The first and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text according to its ordinary meaning as originally understood."); *id.* at 737 (Barrett, J., concurring) (stating that to

identify the scope of the Second Amendment "as it was originally understood … courts must examine the historical tradition of firearm regulation.") (internal citations and quotation marks omitted); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 319–29, text and n.3 (2023) (Jackson, J., dissenting) (interpreting Fourteenth Amendment in accordance with understanding that, when adopted, it "was intended to undo the effects of a world where laws systematically subordinated Black people and created a racial caste system").

As to the understanding of the jury trial right at the time of its adoption, we are on safe ground.

Throughout the Founding Era it was understood that a criminal conviction required a verdict by a unanimous twelve-man jury:

> Yet the law of *England* hath afforded the best method of trial, that is possible, of this and all other matters of fact, namely by a jury of twelve men all concurring in the same judgment, by the testimony of witnesses *viva voce* in the presence of the judge and jury, and by the inspection and direction of the judge.

1 Matthew Hale, Pleas of the Crown 33 (1836 ed.); 3 Matthew Bacon, A New Abridgment of the Laws of England 234 (1768)

(stating petit jury must consist "of *twelve*, and can be neither more nor less"); 3 Blackstone, ch. 23 ("Of the Trial by Jury") ("it is the most transcendent privilege which any subject can be enjoy or wish for, that he cannot be affected in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals."). *See Thompson v. State of Utah*, 170 U.S. 343, 350 (1898) (discussing historical background of Jury Trial Clause). The only constitutional alteration is that, via the Equal Protection Clause, eligibility has broadened, so that, for instance, women may also serve as jurors.

So far so good.

But in 1875, as Reconstruction was drawing to an end, the Jury Clause of Florida's 1868 constitution was amended to provide that the number of jurors "may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve continued in Florida until the Legislature enacted a law specifying a jury of six in Chapter 3010, section 6, Laws of Florida (1877). *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. at 241.

This jury-of-six provision was enacted on February 17, 1877

— less than a month after the last federal troops were withdrawn from Florida in January 1877. *See Gibson*, 16 Fla. 294 (1877), and Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no federal troops] in Florida after 23 January 1877").

This law was consistent with a common effort in the former Confederate states as they "restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*, 598 U.S. ____ (2022) (Gorsuch, J., dissenting from denial of certiorari). *Cf. Ramos v. Louisiana*, 590 U.S. 83 (2020) (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). Florida's jury of six is the child of the same historical context.

This relic of the Jim Crow era was upheld in *Williams v. Florida*, 399 U.S. 78 (1970), holding that trial by a jury of six does not violate the Sixth Amendment.

Williams recognized that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Id.*, 399 U.S. at 98–99. But it concluded that such "purely historical considerations" were not dispositive. *Id.* at 99. Rather, it focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id.* at 100–01. It wrote that "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101–102 & n.48; *cf. Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

Petitioner respectfully submits that the ahistorical, functionalist social science approach of *Williams* was erroneous as it is contrary to the understanding of the Founding Era that criminal defendants have the right to the unanimous verdict of a jury of twelve.

Due to this erroneous ruling, Florida courts have uniformly rejected arguments that Florida's practice of trial by six-member juries should be revisited, and the state supreme court has refused to consider the matter. *See Brown v. State*, 359 So. 3d 408, 410 n.1 (Fla. 1st DCA 2023) (rejecting as "nearly frivolous" claim that defendant charged with armed robbery and kidnapping was entitled to trial by jury of twelve); *Serrano-Delgado v. State*, 392 So. 3d 251 (Fla. 2d DCA 2024) (citing *Williams* and holding defendant was not entitled to jury of twelve on charge of sexual battery on a child under age of twelve); *Kain v. State*, 393 So. 3d 786, 787 (Fla. 3d DCA 2024) ("Affirmed. *See Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (holding Florida's use of six-member jury in non-capital cases does not violate the Sixth Amendment right to trial by jury)."); *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022) (citing *Williams* and holding defendant was not entitled to twelve-member jury at trial for sexual battery on a child under age of twelve), *rev. denied* SC2022–1597, 2023 WL 3830251 (Fla. June 6, 2023), *cert. denied* 144 S. Ct. 2595 (2024); *Simpson v. State*, 368 So. 3d 513, 514 (Fla. 5th DCA 2023) (noting that panel was rejecting claim that defendant charged with attempted murder

was entitled to trial by a jury of twelve persons).

These decisions are binding on the trial courts of Florida. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("in the absence of interdistrict conflict, district court decisions bind all Florida trial courts"). Further, the state constitution and state law specifically authorize six-member juries in noncapital criminal cases. Fla. Const., art. I, § 22 ("The qualifications and the number of jurors, not fewer than six, shall be fixed by law."; § 913.10, Fla. Stat. ("Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.").

So only this Court can right the dilution of the Sixth Amendment wrought in *Williams*. Petitioner calls upon this Court to grant this petition, recede from *Williams*, restore the ancient right to a twelve-member jury, and reverse Petitioner's convictions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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