No.

IN THE SUPREME COURT OF THE UNITED STATES

IAN GRAY, 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

DANIEL EISINGER
Public Defender

Benjamin Nathaniel Paley
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, Florida 33401
(561) 355–7600

Bpaley@pd15.org
Lmattocks@pd15.org
Appeals@pd15.org

QUESTIONS PRESENTED

1. Should *Williams v. Florida*, 399 U.S. 78 (1970), be overturned?

There is another petition raising the same question presented here. See *Kian v. Florida*, No. 25-6623. This case should be held until the Court decides whether to grant or deny review in *Kian*.

2. Does a recidivism statute authorizing a sentencing enhancement based on nonjury findings of facts not alleged in the charging document violate the Sixth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

The parties to the proceedings before the Court are as follows:

Ian Gray, Petitioner.

State of Florida, Respondent.

RELATED PROCEEDINGS

Seventeenth Judicial Circuit of Florida:

State v. Gray, 21-005914CF10A (Oct. 18, 2024)

Fourth District Court of Appeal of Florida:

Gray v. State, 426 So. 3d 497 (Fla. 4th DCA 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner (Ian Gray) respectfully petitions for a writ of certiorari to review the judgment in this case of Florida's Fourth District Court of Appeal.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is published in the Southern Reporter. It is reported as G*ray v. State*, 426 So. 3d 497 (Fla. 4th DCA 2025). A copy is provided in the appendix. See 1a.

JURISDICTION

This Court has jurisdiction to review final judgments or decrees "rendered by the highest court of a state in which a decision could be had." 28 U. S. C. § 1257(a).

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences on November 12, 2025. 1a. Subsequently, Petitioner moved for rehearing, written opinion, and to certify a question of great public importance, which the court denied on January 14, 2026. 2a.

Although the Florida Supreme Court is the highest state court in Florida, the Florida Supreme Court has held that it does not have jurisdiction to review issues that were not discussed by the district court of appeal in its decision. See *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (holding that the Florida Supreme Court is "a court of limited jurisdiction"). In this case, the Fourth District's opinion addressed only a cost issue; the opinion did not discuss the issues argued in this petition. Petitioner could thus not seek higher review at the Florida Supreme Court, meaning the Fourth District was the highest court in the State of Florida where Petitioner could seek a decision. The Court has jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment

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

Section 913.10, Florida Statutes

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

Fla. Stat. § 913.10.

STATEMENT OF THE CASE

Respondent (the State) charged Petitioner (Ian Gray) with one count of domestic battery by strangulation and one count of felony battery (one prior). Before trial, the trial court swore in a six-person jury. The trial court asked Petitioner if he accepted the jury panel. Petitioner accepted the jury panel.

The six-person jury found Petitioner guilty as charged. Then the trial court adjudicated Petitioner guilty, and found him to be both a prison release reoffender (PRR) and a habitual felony offender (HFO). The trial court then sentenced Petitioner to eight years in prison as an HFO, with a five-year mandatory minimum as a PRR.[1]

Petitioner moved to correct a sentencing error, arguing that the trial court did not require the jury to find beyond a reasonable doubt that Petitioner met the criteria for HFO and PRR status. The trial court failed to rule on Petitioner's motion within sixty days. Accordingly, the motion was deemed denied.

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[1] *See Grant v. State*, 770 So. 2d 655, 657–58 (Fla. 2000) (holding that double jeopardy does not preclude a defendant from being sentenced under both the HFO and PRR statutes).

On appeal, Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences, writing only on a cost issue that required a ministerial correction. 1a. Subsequently, it denied Petitioner's motion for rehearing, written opinion, and to certify a question of great public importance. 2a.

REASONS FOR GRANTING THE PETITION

I. *WILLIAMS* IS WRONG.

a. *Williams* marked a departure from well-established precedent.

Because the understanding since the time of William Blackstone was that a criminal defendant charged with a felony was entitled to a twelve-person jury at trial, the Framers would have had that understanding in mind when they drafted, voted on, and adopted the Sixth Amendment to the United States Constitution. Nevertheless, the Court held in *Williams v. Florida*, 399 U. S. 78 (1970), that a criminal defendant charged with a felony is not entitled to a twelve-person jury.

By doing so, the Court ignored the plain and ordinary meaning of the Sixth Amendment. When the words and phrases in the Constitution were adopted, they "were used in their normal and ordinary[,] as distinguished from technical[,] meaning." *United States v. Sprague*, 282 U. S. 716, 731 (1931). "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U. S. 1, 34 (2022) (quoting *District of Columbia v. Heller*, 554 U. S. 570, 634–35 (2008)).

History shows that the common understanding in the 1790s, when the Sixth Amendment was adopted, was that a criminal defendant charged with a felony was entitled to a twelve-person jury. *Thompson v. Utah*, 170 U. S. 343, 349–50 (1898) (holding that since the time of the Magna Carta, the word "jury" had been understood to mean a body of twelve); *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (GORSUCH, J., dissenting from the denial of certiorari); *accord Gibson v. State*, 16 Fla. 291, 300 (1877) (holding that historically, the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, *Comment, Six of One Is Not a Dozen of the Other: A Reexamination of* Williams v. Florida *and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 633 (1998) (discussing twelve-member juries in ancient Greek and Roman trials (myth and real)); 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769) (stating that juries consisting of twelve people was commonplace in the English common law).

Because that understanding had been accepted since the Magna Carta, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment referred to a twelve-person jury. *Id.*, at 350.

For the most part, the Court's precedent adhered to the Sixth Amendment's text's plain and ordinary meaning, holding in several cases that the Sixth Amendment guaranteed a criminal defendant charged with a felony a twelve-person jury.

In 1900, the Court explained that "there [could] be no doubt" that the Sixth Amendment's jury-trial clause protected "a jury composed, as at common law, of twelve jurors." *Maxwell v. Dow*, 176 U. S. 581, 586 (1900). Thirty years later, the Court reiterated that "the phrase 'trial by jury'" in the Constitution incorporated the "essential elements" of juries that "were recognized in this country and England," including the requirement that they "consist of twelve men." *Patton v. United States*, 281 U. S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, [trial by jury] in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve people on a jury in a felony trial. *Duncan v. Louisiana*, 391 U. S. 145, 151–52 (1968).

Only in *Williams* did the Court hold for the first time that the Sixth Amendment did not guarantee a criminal defendant a twelve-

person jury in a felony trial. This departure from well-established precedent was wrong then, and it is wrong now. The Court should grant certiorari.

b. *Williams* relied on the functionalist approach, which the Court has since backed away from.

Although the Court in *Williams* recognized that the Framers "may well" have had "the usual expectation" when drafting the Sixth Amendment that jury trials would have twelve-person juries, *Williams*, 399 U. S., at 98–99, the Court 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").

Since *Williams*, that determination has been proven incorrect. In *Ballew v. Georgia*, 435 U. S. 223 (1978), for example, the Court held that the core "function" of the Sixth Amendment was disturbed by a five-person jury. *Id.*, at 245. Although *Ballew* did not overturn *Williams*, it observed that empirical studies conducted since *Williams* highlighted several problems with its assumptions. For example, *Ballew* noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation," *id.*, at 233, (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.*, at 234, (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.*, at 236; and (4) decreasing jury sizes "foretell[] problems . . . for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.*, at 236–37.

Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-person jury. *Id.*, at 239*;* see also *id.*, at 245–46 (POWELL, J.) (agreeing that five-member juries are

unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Indeed, the Court later acknowledged the impracticability of the functionalist approach. In *Ramos v. Louisiana*, 590 U. S. 83 (2020), the Court held that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the time of the Sixth Amendment's adoption." *Id.*, at 90. Crucially, the Court noted that it is not its job to "distinguish between the historic features of common law jury trials that [it thinks] serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'" *Id.*, at 98.

The same reasoning applies to the historical right to a jury of twelve people: When the People enshrined the jury trial right in the Constitution, they did not attach a rider that future judges could adapt it based on latter-day social science views.

c. Empirical research has further undermined *Williams*.

As already noted, *Williams* itself identified the "function" of the Sixth Amendment as leaving justice to the "commonsense judgment of a group of laymen" and thus allowing "guilt or innocence" to be determined via "community participation and [with] shared

responsibility." 399 U. S., at 100–01. That function is thwarted by reducing the number of jurors to six. Smaller juries are less representative of the community, and they are less consistent than larger juries. See, *e.g.,* Shamena Anwar, et al., *The Impact of Jury Race In Criminal Trials*, 127 Q.J. Of Econ. 1017, 1049 (2012) (finding that "increasing the number of jurors on the seated jury would substantially reduce the variability of the trial outcomes, increase black representation in the jury pool and on seated juries, and make trial outcomes more equal for white and black defendants"); Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009) ("reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury"); Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. . . . In reality, cutting the size of the jury dramatically increases the chance of excluding minorities.").

Other important considerations also weigh in favor of the twelve-person jury. Twelve-person juries deliberate longer, recall

evidence better, and rely less on irrelevant factors during deliberation. See Smith & Saks, *The Case for Overturning* Williams v. Florida *and the Six-Person Jury*, 60 Fla. L. Rev. 441, 465 (2008).

Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." *Id.*, at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., *supra*, at 52.

> d. Six-person jury laws, like Florida's, can be traced to the Jim Crow-era, and contributed to a systematic effort to exclude African-Americans from jury service.

Justice Gorsuch observed that "[d]uring the Jim Crow[-]era, some States 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*, 143 S. Ct. 22, 27 (2022) (GORSUCH, J., dissenting from denial of certiorari) (citations omitted). Florida's six-person-jury law arose in that context. In 1875, the Jury Clause of the 1868 constitution was

amended to provide that the number of jurors "for the trial of causes in any court 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 was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision 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.

The Florida Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla., at 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. See Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) (stating that "there were [no federal troops] in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow-era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving as jurors.

On its face, the 1868 constitution extended the franchise to

black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of black citizens. The 1868 constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. See Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5–6 (1972); Shofner, *supra*, at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." Hume, *supra*, at 15.

The purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." *Id.*, at 15–16.

Furthermore, when the Florida Legislature reduced the size of juries from twelve to six in 1877, it also re-established the "integrity, fair character, sound judgment and intelligence" test for jury service. See Ch. 3010, Laws of Fla. (1877). This discretionary standard was "used to eliminate almost every black citizen from the southern trial venire." Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition against the Racial Use of Peremptory Challenges*, 76 Corn. L. Rev. 1, 89-90 (1990). In fact, after the enactment of Florida's six-person jury law, it was so rare for an African American to serve on a jury that it was worthy of a news article—and this was so well into the twentieth century:

- "It is strange that the presence of a negro on the jury should not have attracted sufficient attention to have caused an inquiry into his eligibility as a jury man." *That Federal Jury*, Panama City Pilot, Nov. 27, 1924, at 1.
- "At one point it looked as though the first negro juror in Monroe County was to be selected." *Child Molesting Trial Jury Chosen*, Key West Citizen, Dec. 11, 1952, at 1, 3.
- "A negro juror was picked today to try Felix Combs, a negro roustabout, for raping a Clearwater woman. Selection of Henry

Davis of Tarpon Springs marked one of the few times a negro has been selected for jury duty." *Negro Juror*, Sanford Herald, Oct. 4, 1948, at 1.

- "The names of several Negroes were included in the 1950 jury list. Last fall, the county's first Negro juror served when Calvin Smith was named on the venire which heard a cattle rustling case in Circuit Court." *First Two Women are Picked for Possible Jury Duty in County*, Citrus Cnty. Chron., Feb. 16, 1950, at 1.

This sad history casts into relief another negative consequence of smaller juries: it denies a great number of citizens the "duty, honor, and privilege of jury service." See *Powers v. Ohio*, 499 U. S. 400, 415 (1991). Many consider jury service an "amazing and powerful opportunity and experience—one that will strengthen your sense of humanity and your own responsibility." United States Courts, *Juror Experiences*, https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service/juror-experiences (last visited Jan. 6, 2026). Jury service, like civic deliberation in general, "not only resolves conflicts in a way that yields improved policy outcomes, it also transforms the participants in the deliberation in important ways—altering how they think of themselves and their fellow

citizens." John Gastil & Phillip J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Values of Institutionalized Deliberation*, 34 Pol'y Stud. J. 605, 606 (2006). Jury service is a "means of affording every citizen the chance to step into the state's shoes, to see the inner workings of the justice system, and to feel first-hand the power of self-government." *Id.*, at 619. "In other words, the jury is a sacred, institutionalized opportunity for citizens to experience the transformative power of public deliberation." *Ibid.*

In *Williams*, the defendant attempted to correct Florida's blatant workaround of the Reconstruction Amendments, but the Court refused to do so.

In view of the foregoing, the Court should grant the petition, recede from *Williams*, restore the ancient right to a jury of twelve, and reverse Petitioner's convictions.

e. *Williams* is bad precedent and should be overturned by the Court.

Florida courts have uniformly refused to hold that a defendant charged with a felony is constitutionally entitled to a twelve-person jury. See, *e.g.*, *Brown v. State*, 359 So. 3d 408, 410 n.1 (Fla. 1st DCA 2023). Those decisions are binding on Florida's trial courts. See

Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992) ("[I]n the absence of interdistrict conflict, district court decisions bind all Florida trial courts.").

The reason state appellate courts have refused to hold that a defendant charged with a felony is constitutionally entitled to a twelve-person jury is because they are bound by Court precedent. See *Testa v. Katt*, 330 U. S. 386 (1947). The Court is thus Petitioner's last and only hope to overturn *Williams*.

Although *Williams* has been on the books for several decades, precedent that is contrary to the plain-and-ordinary meaning of the text of the Constitution must be overturned.

In *Dobbs v. Jackson Women's Health Organization*, 597 U. S. 215 (2022), the Court noted that "stare decisis is not an inexorable command" and "is at its weakest when [the Court] interpret[s] the Constitution." *Id.*, at 264. "[W]hen it comes to the interpretation of the Constitution—the 'great charter of our liberties,' which was meant to endure through the long lapse of the ages—[the Court] place[s] a high value on having the matter settled right." *Ibid.* (cleaned up). And, "when one of [the Court's] constitutional decisions goes astray, the country is usually stuck with the bad decision unless [the

Court] correct[s] [the] mistake." *Ibid.* "Therefore, in appropriate circumstances [the Court] must be willing to reconsider, and if necessary, overrule constitutional decisions." *Ibid.*

Among the factors the Court considers when considering whether to overrule constitutional decisions are "the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo v. Louisiana*, 556 U. S. 778, 792–93 (2009). In addition, the Court also considers whether "experience has pointed up the precedent's shortcomings." *Pearson v. Callahan*, 555 U. S. 223, 233 (2009). Relying on those principles, the Court overturned *Roe v. Wade*, 410 U. S. 113 (1973), which had been the law of the land for nearly fifty years.

As has already been stated, *Williams* has proven to be "fundamentally misguided." See *Loper Bright Enters. v. Raimondo*, 603 U. S. 369, 407 (2024). Primarily, *Williams* does not comport with an originalist interpretation of the Constitution. Up until *Williams* was decided, the Court had long recognized that a criminal defendant charged with a felony had a Sixth Amendment right to a twelve-person jury. *Williams*, for the first time in American jurisprudence, held

otherwise. Even more egregious, was the fact that the Court based its decision on a functionalist approach.

But now that *Ramos* has called into question the Court's earlier reliance on the functionalist approach, *Williams* should be revisited. And upon revisiting *Williams*, the Court should overturn it and return to an originalist interpretation of the Sixth Amendment.

II. A JURY FINDING IS REQUIRED FOR ANY FACT THAT INCREASES A DEFENDANT'S SENTENCE.

In *Erlinger v. United States*, 602 U. S. 821 (2024), the Court emphasized that "[t]he . . . Sixth Amendment[] placed the jury at the heart of our criminal justice system." *Id.*, at 831. Thus, any fact that "increase[s] the prescribed range of penalties to which a criminal defendant is exposed," *id.*, at 834 (alteration in original) (quoting *Apprendi v. New Jersey*, 530 U. S. 466, 490 (2000)), "must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)," *ibid.* The Court further emphasized that a trial court "may 'do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.'" *Id.*, at 837–39 (quoting *Mathis v. United States*, 579 U. S. 500, 511–12 (2016)).

Under Florida law, a trial court may sentence a defendant to an extended sentence of imprisonment if it finds the defendant is an HFO, and a trial court must sentence that defendant to a mandatory minimum if it finds that the defendant is a PRR. Fla. Stat. §§ 775.084(1), (3)(a) ; 775.082(9)(a)1. (2020). To make either finding, a trial court has to make certain factual findings by a preponderance of the evidence. Fla. Stat. §§ 775.084(1), (3)(a); 775.082(9)(a)1. (2020).

Here, as required by Florida law, the trial court went beyond the simple act of finding that Petitioner had been convicted of certain crimes, and also made the additional findings required by Florida's HFO and PRR statutes.

However, under *Erlinger*, for Petitioner to receive an extended sentence for having a requisite number of crimes in his past that were committed within a certain period of time, a jury had to make the finding.

There is no reason to allow Florida trial courts to continue to impose enhanced sentences based on unconstitutional procedures—such as Florida's HFO and PRR statutes. The Court should grant certiorari to stop this unlawful practice.

CONCLUSION

The petition for a writ of certiorari should be granted or held pending the disposition of *Kian v. Florida*, No. 25-6623.

Respectfully submitted,

DANIEL EISINGER
Public Defender

Benjamin Nathaniel Paley
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, Florida 33401
(561) 355–7600

Bpaley@pd15.org
Lmattocks@pd15.org
Appeals@pd15.org