

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTOINE JAMES GARRETT,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS
SECOND APPELLATE DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Can a state court circumvent and avoid the constitutional principles of *Alleyne v. United States*, 570 U.S. 99 (2013) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000) - requiring that any fact that increases the minimum punishment must be pled in the indictment and proven to a jury beyond a reasonable doubt - simply by narrowing the definition of “sentence” to exclude probation or community supervision?

PARTIES TO THE PROCEEDING

- Petitioner is Antoine James Garrett, who was the Defendant-Appellant in the courts below.
- Respondent, the State of Texas, was the Plaintiff-Appellee in the courts below.

LIST OF PROCEEDINGS

Jury Trial

The State of Texas v. Antoine James Garrett
372nd District Court, Tarrant County, Texas
Trial Court No. 1722660
Date of Judgment: February 14, 2025

Direct Intermediate Appeal

Antoine James Garrett v. The State of Texas
Court of Appeals for the Second Appellate District of Texas at Fort Worth
Court of Appeals No. 02-25-00049-CR
Date of Opinion: October 30, 2025

Petition for Discretionary Review

Antoine James Garrett v. The State of Texas
Texas Court of Criminal Appeals
Petition No. PD-0976-25
Date Review Refused: February 12, 2026

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PETITION FOR WRIT OF CERTIORARI

Petitioner Antoine James Garrett seeks a writ of certiorari to review the judgment of the Court of Appeals, Second Appellate District of Texas at Fort Worth. The Texas Court of Criminal Appeals, the court of last resort in Texas for criminal cases, refused Garrett's petition for discretionary review.

OPINIONS BELOW

The opinion of the Court of Appeals, Second Appellate District of Texas at Fort Worth is *Garrett v. State*, No. 02-25-00049-CR, 2025 WL 3039150 (Tex. App.—Fort Worth Oct. 30, 2025, pet. ref'd). The opinion is Appendix A to this Petition. The Texas Court of Criminal Appeals' order refusing Garrett's petition for discretionary review is Appendix B. The district court's judgment is Appendix C.

JURISDICTION

The Texas Court of Criminal Appeals, the court of last resort in criminal cases in Texas, entered its order refusing discretionary review on February 12, 2026. *See Appendix B*. The Petitioner has 90 days (May 13, 2026) to file a petition for certiorari with this Court. Therefore, this petition has been timely filed pursuant to Supreme Court Rule 13.1. *See* Sup. Ct. R. 13.1, This Court has jurisdiction pursuant to 28 U.S.C. § 1257(1).

STATUTORY PROVISIONS

Article 37.07 of the Texas Code of Criminal Procedure allows for a criminal defendant to have a jury assess punishment as follows:

Sec. 1.

(a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

...

Sec. 2.

(b) ... if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend community supervision and the defendant filed his sworn motion for community supervision before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

Tex. Code Crim. P. art. 37.07 §§ 1(a), 1(b), 2(b).

Article 42A.055 also allows the jury to recommend community supervision (probation) as follows:

Art. 42A.055. JURY-RECOMMENDED COMMUNITY SUPERVISION.

(a) A jury that imposes confinement as punishment for an offense may recommend to the judge that the judge suspend the imposition of the sentence and place the defendant on community supervision. A judge shall suspend the imposition of the sentence and place the defendant on community supervision if the jury makes that recommendation in the verdict.

(b) A defendant is eligible for community supervision under this article only if:

(1) before the trial begins, the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state; and

(2) the jury enters in the verdict a finding that the information contained in the defendant's motion is true.

(c) If the jury recommends to the judge that the judge place the defendant on community supervision, the judge shall place the defendant on community supervision for any period permitted under Articles 42A.053(d) and (f), as appropriate.

(d) A judge may extend the maximum period of community supervision in the manner provided by Article 42A.753 or 42A.757.

Tex. Code Crim. P. art. 42A.055.

However, Article 42.056 removes community supervision from the range of possible punishments under the following circumstances:

Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION.

A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

...

(4) is convicted of an offense under Section 21.11 (indecent with a child), 22.011 (sexual assault), or 22.021 (aggravated sexual assault), Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

Tex. Code Crim. P. art. 42A.056 (parenthetical added).

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law . . .

The Sixth Amendment to the United States Constitution provides:

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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; 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 defence.

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

STATEMENT OF THE CASE

A Texas grand jury indicted Antoine James Garrett (Garrett) for two counts of Indecency with a Child. For each offense, a child is person younger than 17 years of age. However, the child being “younger than 14 years of age at the time of the offense” is an aggravating sentencing fact that makes imprisonment mandatory. For the Indecency with a Child charges, the indictment did not allege the victim was “younger than 14 years of age at the time the offense was committed.” No other pleading or notice informed Garrett that the State intended to preclude probation based upon the age sentencing enhancement. The jury convicted Garrett of Indecency with a Child but did not make a finding whether the victim was younger than 14.

Garrett raised the federal question in the trial court. Garrett followed the procedure for the jury to assess punishment by filing a sworn motion for probation. At the sentencing phase of trial, Garrett cited *Alleyne* and *Apprendi* and requested the trial judge instruct the jury that it could recommend probation for the convictions of Indecency with a Child, because the jury had not decided the aggravating sentencing fact. The trial court denied Garrett’s request, and the jury’s punishment instruction did not authorize the jury to recommend probation.

Garrett appealed this *Alleyne* and *Apprendi* issue to the Court of Appeals, Second Appellate District of Texas at Fort Worth. The Court of Appeals affirmed his conviction and sentence. *See Appendix A*. Garrett timely filed a petition for discretionary review with the Texas Court of Criminal Appeals, the court of last resort for criminal cases in Texas. On February 12, 2026, The Texas Court of Criminal Appeals refused the petition. *See Appendix B*.

REASONS FOR GRANTING THIS PETITION

A state court may not circumvent and avoid the constitutional principles of *Alleyne v. United States*, 570 U.S. 99 (2013) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000) - requiring that any fact that increases the minimum punishment must be pled in the indictment and proven to a jury beyond a reasonable doubt - simply by narrowing the definition of “sentence” to exclude probation or community supervision.

The Texas Second Court of Appeals’ holding in this case (*See Appendix A*) conflicts with the decisions of this Court in *Alleyne* and *Apprendi*, as well as in *Ring v. Arizona*, 536 U.S. 584 (2002). The Texas Court of Criminal Appeals, the highest court of review for criminal cases in Texas, denied a petition for discretionary review. *See Appendix B*. Accordingly, this case falls squarely within this Court’s criteria warranting review for a case where “(c) a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Supreme Court Rule 10(c).

Moreover, this issue has far reaching implications for future litigation in Texas. Texas has been disregarding *Alleyne* and *Apprendi* in this manner since at least 2016. *See Gonzalez v. State*, No. 01-15-00395-CR, 2016 WL 2587095 (Tex. App.—Houston [1st Dist.] May 5, 2016, no pet.). Undersigned Counsel is aware of two cases that are currently pending in Texas’ intermediate appellate courts that involve this very issue, one in the Fourth Appellate District of Texas at San Antonio, *Chavarria v. Texas*, 4-25-124-CR, and one in the Sixth Appellate District of Texas at Texarkana, *Kendrick v. Texas* 06-26-00040-CR.

I. Pursuant to *Alleyne v. United States*, the Fifth, Sixth and Fourteenth Amendments to the United States Constitution require the State to plead any fact that makes the imposition of a minimum term of imprisonment mandatory.

A. The State must plead any fact that increases the penalty for a crime.

“Any fact that, by law, increases the penalty for a crime is an ‘element’ that must be submitted to the jury and found beyond a reasonable doubt.” *Alleyne v. United States*, 570 U.S. 99, 103 (2013) *citing* U.S. Const. amend. V, VI. “[S]entencing factors, like elements, are facts that have to be tried to the jury and proved beyond a reasonable doubt.” *Niles v. State*, 555 S.W.3d 562, 570 (Tex. Crim. App. 2018). Under Texas law, the State must prove facts that increase the penalty for a crime. *See* Tex. Code Crim. P. art. 21.03 (“Everything should be stated in an indictment which is necessary to be proved.”); *id.* art. 21.11 (“An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment[.]”).

B. For Indecency with a Child, the age of the victim is a fact that can increase the penalty from no imprisonment to a mandatory two-year prison term.

In Texas, penalties for felonies range from community supervision (probation) to imprisonment or death. *See* Tex. Pen. Code §§ 12.31-35; Tex. Code Crim. P. Ch. 42A. In some instances, specific non-criminal history facts make a prison sentence

mandatory for Indecency with a Child, because those facts (if pleaded and proved) preclude a jury from recommending probation.

Texas law allows for a defendant to elect to have his punishment assessed by the same jury that finds the defendant guilty. Tex. Code Crim. P. art. 37.07 § 1(b), § 2(b). Article 42A.055 authorizes a jury to recommend that the judge suspend the imposition of a sentence and place the defendant on probation. Tex. Code Crim. P. art. 42A.055. To qualify for jury-recommended probation, articles 37.07 and 42A.055 impose a burden on the defendant to file a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state. Tex. Code Crim. P. art. 37.07 § 2(b), 42A.055(b)(1). If the defendant meets this burden, then Article 42A.056 sets forth the limitations for jury-recommended community supervision. Tex. Code Crim. P. art. 42A.056.

The limitation set forth in Article 42A.056 pertinent to the instant case is that a jury may not recommend probation if the jury convicts the defendant under Section 21.11 Penal Code (Indecency with a Child), and the victim of the offense was younger than 14 years of age at the time the offense was committed. Tex. Code Crim. P. art. 42A.056(4). The victim's age (younger than 14) is a fact that, if pleaded and proved, makes a prison sentence mandatory. *Id.* at (4). Specifically, the defendant must serve a mandatory minimum term of imprisonment of two years. *See* Tex. Code Crim. P. art. 42A.056(4) (ineligibility for probation); Tex. Pen. Code § 21.11(d) (classified as a Third and Second Degree Felony); Tex. Pen. Code §§ 12.33, 12.34 (imprisonment

range for Third and Second Degree Felonies); Tex. Gov't Code § 508.145(d)(2) (mandatory two years without parole).

C. Because whether the victim is younger than 14 increases the penalty for Indecency with a Child, the State must plead that fact.

Because a defendant may not receive a probated sentence “if the victim of the offense was younger than 14 years of age at the time the offense was committed,” that fact constitutes an “element” that the State must plead and prove. A fact is an “element” if it increases “the floor” of the applicable punishment. *Alleyne*, 570 U.S. at 107–08. Facts that increase the mandatory minimum punishment are elements and must be submitted to the jury and found beyond a reasonable doubt. *Id.* In the instant case, the “element” increases “the floor” from no confinement to two years of confinement.

Treating the fact of whether “the victim of the offense was younger than 14 years of age at the time the offense was committed” as an “element” that the State must plead and prove enables the defendant to predict the legally applicable penalty from the face of the indictment. *See Alleyne* at 114. “It also preserves the historic role of the jury as an intermediary between the State and criminal defendants.” *See id.*

The question is not simply whether a fact increases the number of years of imprisonment a defendant faces in the abstract. Rather, the inquiry is whether “a finding of fact alters the legally prescribed punishment so as to aggravate it” and if so “the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.” *Alleyne* at 114-5.

D. The state court’s refusal to require the state to allege and prove beyond a reasonable the fact that removes probation from the statutory range of punishments conflicts with this court’s decisions in Alleyne.

In the trial court, the indictment did not allege the victim was “younger than 14 years of age at the time the offense was committed.” The Court of appeals for the Second Appellate District of Texas (The Second Court of Appeals) held, “[T]he State properly pleaded the indecency offenses” and “a properly pleaded indecency count automatically sets the minimum punishment at two years’ confinement.” *Garrett v. State*, No. 02-25-00049-CR, 2025 WL 3039150, at *1 (Tex. App.—Fort Worth Oct. 30, 2025, pet ref’d.). *See Appendix A*. The Second Court of Appeals gave a topsy-turvy explanation, “It was not the State’s burden to plead in such a way that would give Garrett the opportunity to have the jury recommend community supervision on the indecency counts.” *Id.* at *6. However, it absolutely is the State’s burden to plead a fact that precludes a lesser penalty (i.e., probation).

The Second Court of Appeals holding in this case conflicts with the decisions of this Court in *Alleyne v. United States*, 570 U.S. 99 (2013) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The Texas Court of Criminal Appeals, the highest court of review for criminal cases in Texas, denied a petition for discretionary review. *See Appendix B*. Accordingly, this case falls squarely within this Court’s criteria warranting review for a case where “(c) a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Supreme Court Rule 10(c).

II. If state law mandates the imposition of a minimum term of imprisonment based upon proof of an aggravating fact, then that aggravating fact increases the “penalty” of the offense.

A. Alleyne’s protections do not evaporate because a jury may recommend probation.

The opinion of the Second Court of Appeals fixates on labels rather than addressing reality. A ten-year sentence imposed is not the same as a ten-year sentence suspended. Regardless of labels, going to prison is a greater penalty than probation.

The Second Court of Appeals insists that because Texas does not call probation a “sentence,” *Alleyne* and *Apprendi* do not apply to jury verdicts of probation. *Garrett*, 2025 WL 3039150, at *6. The Second Court of Appeals borrows its reasoning from another Texas intermediate appellate court. *Gonzalez v. State*, No. 01-15-00395-CR, 2016 WL 2587095 (Tex. App.—Houston [1st Dist.] May 5, 2016, no pet.). However, the inquiry is whether “a finding of fact alters the legally prescribed punishment so as to aggravate it” and if so “the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.” *Alleyne* at 114-5. *Alleyne* is concerned with the increase of the *penalty* and *punishment*.

The reasoning in *Alleyne* in no way excludes the application of the Fifth and Sixth Amendments because of the traditional Texas understanding that probation is not a sentence. In *Gonzalez*, the Texas First Court of Appeals explains that, under Texas law, community supervision is not considered a sentence or even a part of a sentence. *Id.* at *5. From that statement, *Gonzalez* pronounces that whether a

defendant is eligible for community supervision has no bearing on the “mandatory minimum” or “mandatory maximum” sentence that he may receive. *Id.* at *5. *Gonzalez* does not endeavor to address the Fifth or Sixth Amendments. *Id.* Instead, *Gonzalez* reaches the non sequitur that *Alleyne* and *Apprendi* do not apply. *Id.* For some unexplained reason, *Gonzalez* latches onto the notion that *Alleyne* only applies to the Texas traditional notion of what constitutes a “sentence” (imposition of a term of imprisonment). *Alleyne*’s pronouncements are not so narrow.

Alleyne’s rationale for invocation of the Fifth and Sixth Amendments is that the mandatory minimum *sentence* increases the *penalty* for the crime. *Alleyne*, 570 U.S. at 102. “[I]t is impossible to dispute that facts increasing the legally prescribed floor *aggravate* the punishment.” *Id.* at 113. Likewise, *Apprendi* applies to “facts that increase the prescribed range of penalties to which a criminal defendant is exposed.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). *Alleyne* and *Apprendi* are concerned with the penalty and punishment, not merely what *Gonzalez* considers a sentence.

B. Texas probation is within the spectrum of punishment and penalty to which the Fifth and Sixth Amendments apply.

Probation is punishment. Probation is a penalty. The Texas statute requiring a hearing on proper “punishment” contains the provision allowing a defendant to seek probation from the jury. Tex. Code Crim. P. art. 37.07, § 2(b). The provisions regarding the conditions a judge may impose recognize probation as “punishment.” Tex. Code Crim. P. art. 42A.301 (“The judge may impose any reasonable condition that is designed to . . . punish, rehabilitate, or reform the defendant.”). Probation conditions may require a “defendant serve a term of confinement and treatment in a

substance abuse felony *punishment* facility.” Tex. Code Crim. P. art. 42A.303(a). Several statutes regarding conditions of probation for intoxication offenses recognize the defendant is being “punished” by the imposition of probation. *See e.g.* Tex. Code Crim. P. art. 42A.404, 407, 408(c)(2). Statutes related to conditions of probation for sexual offenses recognize probation as punishment. Tex. Code Crim. P. art. 42A.453(b)(4).

But also, going to prison is a penalty and punishment. The fact of whether “the victim of the offense was younger than 14 years of age at the time the offense was committed” determines if the defendant may be allowed to avoid going to prison for the charges. *Alleyne* applies to this fact.

C. A state cannot duck the Constitution by semantic evasion.

This Court has made it overwhelmingly clear that it does not matter how the State wants to label the penalty or punishment:

The dispositive question, we said, ‘is one not of form, but of effect.’ *Apprendi* 530 U.S. at 494, 120 S. Ct. 2348. If a State makes an increase in a defendant’s authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt.

Ring v. Arizona, 536 U.S. 584, 602 (2002).

In the federal context, where the government argued that a prison term resulting from the revocation of supervised release is not a part of the original sentence, the Court reinforced the above holding, “As this Court has repeatedly explained, any ‘increase in a defendant’s authorized punishment contingent on the finding of a fact’ requires a jury and proof beyond a reasonable doubt ‘no matter’ what

the government chooses to call the exercise.” *United States v. Haymond*, 588 U.S. 634, 647 (2019) citing *Ring*, 536 U.S. at 602.

The Constitution does not mean one thing to one state and something different to another. For instance, the Supreme Judicial Court of Maine (Maine’s court of last resort) has applied *Apprendi* protections to “probation,” specifically the length of probation. *State v. Hodgkins*, 2003 ME 57, ¶¶ 9-10, 822 A.2d 1187, 1191–92. In *Hodgkins*, following a jury trial, at sentencing the trial court determined for sentencing purposes that the crime fell within an aggravating category of assaults (17–A M.R.S.A. § 1202(1–B)), so the trial court determined a two-year probation term was mandated by the undisputed fact that the defendant and the alleged victim had a child together. *Id.*

However, the jury verdict, as announced by the trial court, did not contain a finding that the assault fit within the aggravating category (“in the context of a domestic dispute”). *Id.* The Maine Court held, “In the absence of a finding, beyond a reasonable doubt, that the assault involved domestic violence, the maximum probationary period allowed by law was one year and the court lacked the authority to increase the period of probation.” *Id.* at 1192.

The Maine Court relied upon the holding of this Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). “[A]ny 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.” *Hodgkins*, 2003 ME 57 at 1192 citing *Apprendi* at 49.

Hodgkins further quotes *Apprendi*, “[F]acts that expose a defendant to a punishment greater than that otherwise legally prescribed [are] by definition ‘elements’ of a separate legal offense.” *Id.* citing *Apprendi* at 483 n. 10. *Hodgkins* said, “Any fact used to enhance a sentence above the prescribed statutory maximum sentence for the crime at issue must be pled and presented to the fact-finder for adjudication and found to exist beyond a reasonable doubt.” *Id.*

Hodgkins demonstrates that labels can vary among jurisdiction, so application of the Constitution cannot depend on a jurisdiction’s labels. *Alleyne* applies to a fact that increases the penalty for a crime no matter what the State chooses to call the exercise.

D. The state court’s refusal to require the state to allege and prove beyond a reasonable doubt the fact that increases the statutory range of punishments conflicts with this Court’s decisions in Ring.

By relying on labels to try to circumvent *Alleyne* and *Apprendi*, the Texas Second Court of Appeals’ holding in this case conflicts with the decisions of this Court in *Ring v. Arizona*, 536 U.S. 584, 602 (2002). The Texas Court of Criminal Appeals, the highest court of review for criminal cases in Texas, denied a petition for discretionary review. *See Appendix B.* Again, this case falls squarely within this Court’s criteria warranting review for a case where “(c) a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Supreme Court Rule 10(c).

III. The Texas Second Court of Appeals read into the Texas Code of Criminal Procedure Article 42A.056 a requirement that the defendant bears the burden to disprove facts, although not pled, that the State may use to increase the defendant's penalty. This concept conflicts directly with this Court's prior decisions in *Alleyne*, *Apprendi* and *Ring*.

The Court of Appeals opinion rests on the contra-constitutional assumption that Texas law places on the criminally accused a burden to prove a sentencing factor (other than criminal history). *Garrett*, 2025 WL 3039150, at *6 (See Appendix A), citing *Gonzalez v. State*, No. 01-15-00395-CR, 2016 WL 2587095 *4 (Tex. App.—Houston [1st Dist.] May 5, 2016, no pet.) (“[T]o be eligible to receive community supervision, the burden was on Garrett to show that the victim was over fourteen years of age at the time the indecency offenses were committed.”). The Second Court of Appeals’ opinion is contrary to the Fifth Amendment, Sixth Amendment, this court’s jurisprudence, and the relevant statutory text.

A. The Texas rule of proof for aggravating sentencing factors conflicts with the United States Supreme Court’s decisions in *Apprendi* and *Alleyne*.

To shift the burden of proof to the defendant, the Court of Appeals opinion relies on *Gonzalez v. State*, an unreported opinion from the Texas First Court of Appeals. *Garrett*, 2025 WL 3039150, at *6. In *Gonzalez v. State*, the Houston Court (1st Dist.) cited *Baker v. State*, 519 S.W.2d 437 (Tex. Crim. App. 1975) and *Green v. State*, 658 S.W.2d 303 (Tex. App.—Houston [1st Dist.] 1983, pet. ref’d). Notably, Texas courts decided *Baker* (1975) and *Green* (1983) well before this Court decided *Apprendi* (2000) and *Alleyne* (2013). Accordingly, the authority relied upon by the Second Court of Appeals and the First Court of Appeals did not have the benefit of

the better understood Fifth and Sixth Amendment as explained in *Apprendi* and *Alleyne*.

“Any fact that, by law, increases the penalty for a crime is an ‘element’ that must be submitted to the jury and found beyond a reasonable doubt.” *Alleyne v. United States*, 570 U.S. 99, 103 (2013) *citing* U.S. Const. amend. V, VI. Likewise, *Apprendi* applies to “facts that increase the prescribed range of penalties to which a criminal defendant is exposed.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Treating the fact of whether “the victim of the offense was younger than 14 years of age at the time the offense was committed” as an “element” that must be pleaded and proved by the State, enables the defendant to predict the legally applicable penalty from the face of the indictment. *See Alleyne at 114*. “It also preserves the historic role of the jury as an intermediary between the State and criminal defendants.” *See id.* Still, Texas explicitly places the burden on Garrett to prove particular facts at sentencing, and this new rule is contrary to the United States Supreme Court’s decisions in *Apprendi* and *Alleyne*.

B. The state court’s shifting the burden to the defendant to disprove a fact that increases the mandatory minimum sentence conflicts with this Court’s decisions in Apprendi and Alleyne.

This court should review the Texas rule of proof that places on the defendant a burden to prove a non-criminal history sentencing factor. The Texas rule of proof for aggravating sentencing factors conflicts with the United States Supreme Court’s decisions in *Apprendi* and *Alleyne*. This case falls squarely within this Court’s criteria warranting review for a case where “(c) a state court . . . has decided an important

federal question in a way that conflicts with relevant decisions of this Court.”
Supreme Court Rule 10(c).

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the opinion of the Court of Appeals, Second Appellate District of Texas at Fort Worth in *Garrett v. State*, No. 02-25-00049-CR, 2025 WL 3039150 (Tex. App.—Fort Worth Oct. 30, 2025, pet. ref’d) (*See* Appendix A to this Petition), and the Texas Court of Criminal Appeals’ order denying Garrett’s petition for discretionary review *See Appendix B*.

Respectfully submitted this 13th day of May, 2026.

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