

26-5423

**In The
SUPREME COURT OF THE UNITED STATES
October Term 2025**

RAYMOND BRIGHT,
Petitioner,
V.

FLORIDA, AND SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS

Respondent.

CAPITAL CASE

*On Petition for Writ of Certiorari to the
Supreme Court, State of Florida*

**REPLY TO FLORIDA’S BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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October 7, 2026

LIST OF PARTIES AND RELATED CASES:

PARTIES

Raymond Bright – Petitioner

State of Florida – Respondent

Secretary, Florida Department of Corrections – Respondent

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I. REPLY TO STATE OF FLORIDA'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Petitioner responds to the State's Brief in Opposition as follows:

A. The State argues Bright abdicated his duty to show his question presented merits this Court's review. . The State here argues that Bright only argues the issue is important to him and him alone. (BIO at 8). In *Thomas v. Florida*, 748 So.2d 970 (Fla.1999), the Florida Supreme Court reversed Thomas' conviction on other grounds, but noted, in a footnote, their thoughts on the argument asking the jurors to show the defendant the same mercy he showed his victims. They wrote, regarding this argument:

“ During the penalty phase closing argument, the State made the following comment to the jury: “Today is Robert Thomas' day of reckoning. I ask you to show him the **same mercy** that he showed to Imara Skinner on that day.” Thomas concedes he did not object to this statement. Absent a contemporaneous objection, this Court will not review comments made by counsel in closing argument unless they constitute fundamental error. *See Kilgore v. State*, 688 So.2d 895, 898 (Fla.1996); *Wyatt v. State*, 641 So.2d 355, 360 (Fla.1994). In order to constitute fundamental error, improper comments made in the closing arguments of a penalty phase must be so prejudicial as to taint the jury's recommended sentence. *See Wyatt*, 641 So.2d at 360. While we do not need to reach the question today of whether this comment constituted

fundamental error, we reiterate that asking a jury to show as much mercy to a defendant as he showed the victim is a clear example of improper prosecutorial misconduct, which constitutes error and will not be tolerated. *See Urbin v. State*, 714 So.2d 411 (Fla.1998); *Richardson v. State*, 604 So.2d 1107 (Fla.1992); *Rhodes v. State*, 547 So.2d 1201 (Fla.1989)(reversed); *Bell v. State*, 965 So.2d 48 (Fla. 2007)(prosecutor makes same mercy argument);

Despite saying they won't tolerate these arguments, they seem to tolerate them just fine now. Florida now routinely allow such arguments to occur without sanction, finding their use generally harmless. *See, e.g.*, the instant case; *Wolf v. State*, 416 So.3d 1117 (Fla. 2025)(harmless error); *Ritchie v. State*, 344 So.3d 369 (Fla. 2022)(same mercy argument and "golden rule" arguments did not warrant new sentencing); *Brooks v. Florida*, 762 So.2d 879 (Fla. 2000); *Merck v. State*, 975 So.2d 1054 (Fla. 2007)(Prosecutor made same mercy argument, but didn't dwell on it – so make it, but don't dwell on it, and it will be tolerated); *Nowell v. State*, 998 So.2d 597, 607 (Fla.2008)(reversed on *Batson* issue, but notes impropriety of same mercy argument); *Reed v. State*, 875 So.2d 415 (Fla. 2004)(noting that the court has held the same mercy improper, but it only happened once here, so harmless); *Sharpe v. McDonough*, 2006 WL 2038562 (MD Florida 2006)(Florida has repeatedly found making

argument only once harmless). Here, not only was the prosecution on constructive notice of the Florida Supreme Court's holding that violations of the "same mercy" argument prohibition would not be tolerated, but the prosecutor certainly was on actual notice of the trial court's order specifically prohibiting it in this case. (App. 101). Given the amount of times this issue comes up in Florida courts alone and in many of those cases, in the post-conviction process, it is hardly an issue only Mr. Bright cares about. The argument is made in sentencings in capital cases quite frequently. A Westlaw search nationwide of federal and state case law databases, shows 113 hits today on "same mercy" and "death."

B. The State argues Bright's petition lacks clarity. The State of Florida's next critique argues the Petitioner only used three (3) pages explaining why cert should be granted. (BIO at 9). Three pages might have been excessive, as philosophically, the undersigned takes the word "brief," as it is used in the legal drafting process, to heart. "Have a point and get to it"¹ should always be the goal. The Florida Supreme Court mixes the concepts underlying *Strickland*. The jury's decision on a death

¹ Jim Mandich of the 1972 Miami Dolphins used to say this as a radio host on WQAM in South Florida after his retirement from football.

recommendation, comparing aggravators and mitigators, is not a mathematical calculation.. It is a moral judgment. The Florida Supreme Court's focus on only the evidence of guilt and the existence of aggravators, to the exclusion of all else, misapprehends *Strickland*.

C. The State argues the issue was not raised below. The fact this Court is being asked to review the Florida Supreme Court's methodology in an opinion they wrote definitionally disproves this argument.

D. The State argues Bright's question is intertwined with dispositive Florida law resolved against him below. The "same mercy" argument has its roots in concepts of due process, therefore it is clearly a freestanding constitutional question, untethered to the picadilloes of Florida law. See, e.g., *Wolf v. State*, 416 So.3d 1117 (Fla. 2025)(majority discusses "same mercy" argument as a due process issue, and a concurring issue argues there is no due process reason to prohibit those arguments despite the longstanding prohibition against it). Moreover, this Court's famous assertion of the role of the prosecutor in our system in *Berger v. U.S.*, 295 U.S. 78 (1935), where they say:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose

obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

That sentiment is quintessentially based in due process – i.e. the process that is owed (due) to a citizen. A foul blow was struck here. The question is what is to be done in terms implicated by *Strickland*. In other words, how can the courts act as an interlocutor on moral questions assigned to citizen jurors.

E. The State argues Bright appears to seek a fact-bound decision inappropriate for certiorari. The Petitioner understands this Court does not reweigh the facts on these types of cases and did not argue for such a review

F. The State argues this Court’s precedent already answers Bright’s legal question consistent with the decision below. The Petitioner has searched for a case where this Court has ruled on the

“same mercy” argument and found none. The State of Florida does not cite one either.

VII. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays this Court grant certiorari review for the reasons outlined herein.

Respectfully submitted:

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