

No. 26-5506

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID JONES,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

RESPONSE TO PETITION

JAMES UTHMEIER
*Attorney General of
Florida*

OFFICE OF THE
ATTORNEY GENERAL
State of Florida
1515 N. Flagler Drive,
Suite 900
West Palm Beach, FL
33401
Phone: (561) 837-5016
CrimAppWPB@
myfloridalegal.com

CELIA TERENZIO
*Bureau Chief, Criminal
Appeals
Counsel of Record*
MELYNDA MELEAR
Assistant Attorney General

Counsel for Respondent

QUESTIONS PRESENTED

1. More than half a century ago, this Court held that Florida’s use of six-person juries satisfies the Sixth Amendment. *Williams v. Florida*, 399 U.S. 78, 86 (1970). After examining the history and purpose of the right to trial by jury, the Court concluded that the framers enshrined no 12-juror requirement in the Constitution, even though most founding-era juries consisted of 12 persons. Relying on *Williams*, Florida and five other states continue to use fewer than 12 jurors in at least some criminal trials. In Florida, where all noncapital crimes are tried before six-member juries, roughly 5,000 criminal convictions are currently pending on direct appeal.

As in *Kian v. Florida*, No. 25-6623, 2026 WL 1718018 (June 15, 2026) (cert. granted), the question presented is whether the Court should overrule *Williams* and hold that the Sixth Amendment requires the use of 12-person juries in serious criminal cases.

2. The second question presented is whether sections 775.082 and 775.084, Florida Statutes, are facially constitutional where they provide that a trial judge make findings, including the fact of a prior conviction and its timing, that trigger sentence enhancements in light of this Court’s reiteration in *Erlinger v. United States*, 602 U.S. 821 (2024) that a jury find any fact beyond the fact of a conviction to support a sentence enhancement.

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STATEMENT OF THE CASE

1. In 1877, Florida began using six-person juries to try noncapital criminal defendants. *See* Act of February 17, 1877, ch. 3010, § 6, 1877 Fla. Laws 54. That same year, the Florida Supreme Court held that the use of six-person juries neither “destroy[ed] [n]or infring[ed] the right of trial by jury.” *Gibson v. State*, 16 Fla. 291, 300 (1877). Ninety years later, this Court opened another avenue to challenge the validity of Florida’s six-person juries, holding that states are bound by the jury-trial guarantee in the Sixth Amendment to the federal Constitution. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). But just two years after that, this Court concluded that six-person juries satisfy that guarantee. *Williams v. Florida*, 399 U.S. 78, 86 (1970). For nearly as long as states have had a Sixth Amendment duty to provide criminal jury trials, this Court’s message to the people of Florida has been clear: the jury structure that they have settled on for a century and a half fulfills that duty. Unsurprisingly then, Florida has continued its longstanding practice of using six-person juries in trials of noncapital offenses. *See* Fla. Stat. § 913.10.

2. Petitioner David Jones was tried for attempted first-degree murder with a deadly weapon and carrying a concealed weapon by a convicted felon. R. 51. The counts were severed, and Jones proceeded to trial on the attempted first-degree murder charge. Tr. 15. The trial court empaneled a six-person jury as dictated by Florida law. *See* Fla. Stat. § 913.10; *State v. Hogan*, 451 So. 2d 844, 845 (Fla. 1984). Prior to jury selection Jones did not file any objection to the jury size.

The evidence at trial revealed that Jones jumped out from behind bushes and ran out toward the victim with a knife and said that he was going to kill her. Tr. 234–236. Jones with a knife in his hand chased the victim as she ran around a nearby vehicle. Tr. 236–38. The victim screamed and called the police as she ran, so Jones ran off. Tr. 238. Jones previously stabbed and beat the victim. Tr. 227–28, 231.

Presented with this evidence, the jury returned a unanimous verdict finding Jones guilty of the lesser included offense of attempted second-degree murder. R. 200–01; Tr. 453. The State nolle prossed the concealed weapon charge. Tr. 412.

Upon proof by the prosecution of the petitioner’s prior convictions, the trial court designated Jones a prison releasee reoffender and a habitual felony offender and imposed a sentence on him based on those designations. R. 174, 444–45, 608–14, 621–22, 886–921.

3. Jones appealed his convictions to Florida’s Fourth District Court of Appeal, arguing that the Sixth Amendment entitled him to be tried by a 12-person jury because this Court abrogated *Williams* in *Ramos v. Louisiana*, 590 U.S. 83 (2020), which held that the Sixth Amendment requires unanimous verdicts in state court as in federal court, overruling *Apodaca v. Oregon*, 406 U.S. 404 (1972).

Pending the appeal, Jones filed a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b) in the trial court, challenging his designations as habitual felony offender and prison

releasee reoffender. R. 827–42. The trial court’s findings for those designations, he argued, ran afoul of *Erlinger v. United States*, 602 U.S. 821 (2024), which reaffirmed *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that a jury must find a fact that would increase the prescribed sentence range. The trial court denied the motion. R. 922.

The Fourth District affirmed in a per curiam, summary decision. Pet. App. 2–3. Jones then petitioned this Court for a writ of certiorari.

ARGUMENT

I. The Court should hold this petition pending disposition of *Kian*.

Jones contends that the Court should review the Fourth District’s summary decision and use it as a vehicle to overrule *Williams v. Florida*, 399 U.S. 78 (1970), which held that the Sixth Amendment permits six-person juries in criminal cases. On June 15, 2026, this Court granted review in *Kian v. Florida*, No. 25-6623, which presents the identical legal issue. Consequently, the Court should hold the petition in abeyance pending its resolution of this same issue in *Kian* and then dispose of it accordingly.

II. The court should deny this petition with respect to Jones’s Sixth Amendment challenge to sections 775.082 and 775.084, Florida Statutes.

Jones challenges the facial constitutionality of sections 775.082 and 775.084, Florida Statutes, which allow a trial court to enhance a criminal sentence based on certain findings as to the defendant’s recidivism.

See Erlinger v. United States, 602 U.S. 821 (2024); *Apprendi v. New Jersey*, 530 U.S. 466 (2000). This Court should deny the petition, because Jones fails to explain why certiorari review is necessary, because he failed to preserve this claim below, and because his facial challenge fails on the merits regardless.

A. Jones does not identify any lower court conflict that necessitates resolution by this Court.

Jones’ request for relief meets none of the tests set forth in this Court’s Rule 10, “Considerations Governing Review on Certiorari.”

“Review on a writ of certiorari is not a matter of right,” and this Court will grant a petition for writ of certiorari “only for compelling reasons.” Sup. Ct. R. 10. Importantly, this Court may consider reviewing a petition involving the decision of a United States court of appeals that conflicts with the decision of another United States court of appeals or of a state court of last resort. *See* Sup. Ct. R. 10(a). This Court may also consider a decision of a state court of last resort that conflicts with the decision of another state court of last resort or of a United States court of appeals on an important federal question. *See* Sup. Ct. R. 10(b). And it may consider the decision of a state court, or United States court of appeals, on an “important federal question that has not been, but should be, settled by this Court, or . . . [on] an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c).

Significantly, the petitioner here has failed to identify any United States court of appeals split on the application of this Court's decision in *Erlinger v. United States* to sections 775.082 or 775.084 of the Florida Statutes. In fact, Jones does not identify any United States court of appeals or Florida court decision on the issue, which is a prerequisite to evaluating the considerations for certiorari review above.

Neither does Jones attempt to demonstrate any conflict that this Court would entertain absent a challenge to the constitutionality of a Florida statute that has not been spoken on by the state's highest court, the Florida Supreme Court.

As Jones has failed to demonstrate a basis for certiorari review, this Court should deny the petition.

B. Jones's petition would be a bad vehicle to address any of his Sixth Amendment arguments on the merits because he failed to preserve the claim below.

This case would be a bad vehicle, in any event, for the Court to address the application of *Erlinger* to sections 775.082 and 775.084 because Jones did not properly preserve the claim for review.

This Court has explained that it "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997). The petitioner bears the burden of showing that the claim was properly presented to the state court. *Id.* When

the state court that rendered the decision is silent on the federal question before this Court, the question is presumed not properly presented and the petitioner must then demonstrate that the state court had “a fair opportunity to address the federal question that is sought to be presented here.” *Id.* at 86–87 (quoting *Webb v. Webb*, 451 U.S. 493, 501 (1981)). To meet this burden, the petitioner can show that the claim was raised “at the time and in the manner required by the state law.” *Id.* at 87 (quoting *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 77–78 (1988)). Alternatively, the petitioner can convince this Court that “the state procedural requirements could not serve as an independent and adequate state-law ground for the state court’s judgment.” *Id.* In other circumstances, the petitioner can show that it presented the specific question at issue with “fair precision and in due time.” *Id.* (quoting *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928)).

Jones cannot satisfy any of these showings. He did not raise the claim “at the time and in the manner required by [Florida] law.” In Florida, a criminal defendant must “request a jury trial on sentencing, or object to the trial judge sitting as the trier of fact, prior to the sentencing hearing.” *Luton v. State*, 934 So. 2d 7, 10 (Fla. 3d DCA 2006) (on motion for rehearing). Jones did not make such a request. Instead, he attempted to present his issue through a post-sentencing motion to correct sentencing error under Florida Rule of Criminal Procedure 3.800(b). *See Jackson v. State*, 983 So.

2d 562, 571 (Fla. 2008). A rule 3.800(b) motion, however, is not the proper vehicle to preserve, or properly present, an *Erlinger* issue the defendant failed to contemporaneously raise. Rule 3.800(b) is intended to preserve errors in orders or in the sentence itself. *Jackson*, 983 So. 2d at 566. The rule is not intended to bypass the requirement for a contemporaneous objection, *id.*, nor to preserve a procedural error in the sentencing process. *Id.* at 573. An *Erlinger* claim is a claim of error in the sentencing process, not an error in the order or in the sentence itself, and, therefore, it cannot be preserved for appellate review through a rule 3.800(b) motion.

Jones failed to preserve his claim for appellate review under state law and should not be allowed to bring it up before this Court. He also does not explain why the failure to comply with Florida law would not be an adequate and independent ground for the state court to disregard that claim.

Neither was the issue presented in due time. It should have been raised at sentencing, a process in which Jones had ample time to bring up the matter, but it was not. *See Mutual Life Ins. Co. v. McGrew*, 188 U.S. 291, 308 (1903) (“The proper time is in the trial court whenever that is required by the state practice.”).

As a rule 3.800(b) motion was not the proper state law mechanism to raise an *Erlinger* issue, this Court should deny certiorari review.

C. Jones’s facial challenge fails because the statutes he challenges would not be unconstitutional in all applications.

Finally, Jones’s facial constitutional challenge to sections 775.082 and 775.084, Florida Statutes, fails on the merits.

Although this Court reaffirmed in *Erlinger* that a jury, and not the trial court, must determine facts that will trigger enhanced penalties, it also recognized the “narrow exception” in *Almendarez-Torres*, 523 U.S. 224 (1998), that allows judges to find “only ‘the fact of a prior conviction.’” *Erlinger*, 602 U.S. at 838 (quoting *Alleyne v. United States*, 570 U.S. 99, 111 n.1 (2013)). Under *Almendarez-Torres*, it would not make sense that a fact found by the judge would apply to a conviction alone, and not also at least to the identity of the convicted person, the date of that prior conviction, and the venue—otherwise it would be impossible to confirm whether we are dealing with the right conviction. This Court relevantly explained in *Erlinger* that, pursuant to the *Almendarez-Torres* exception, a judge can find the previous conviction and the “legal elements required to sustain” those convictions. *Erlinger*, 602 U.S. at 838. To do that, the court may need to consult “*Shepard* documents to ascertain the jurisdiction in which [the offenses] occurred and the date on which they happened.” *Id.* at 840.

Therefore, the *Almendarez-Torres* exception fairly permits a judicial finding of the venue where the conviction was entered, the date on which it was entered,

and the identity of the convicted person—the ingredients required to determine *which* prior conviction is at issue. See *Almendarez-Torres*, 523 U.S. at 229, 242–47 (holding that whether a deportation was subsequent to a conviction for commission of an aggravated felony was not an element of the offense). From that, the judge can “determine what crime, with what elements, the defendant was convicted of.” *Erlinger*, 602 U.S. at 838 (quoting *Mathis v. United States*, 579 U.S. 500, 512 (2016)); see also *Descamps v. United States*, 570 U.S. 254, 269–70 (2013) (“[T]he only facts the court can be sure the jury so found are those constituting elements of the offense—as distinct from amplifying but legally extraneous circumstances.”).

Here, Jones challenges the sentence enhancement provisions in sections 775.082 and 775.084, Florida Status, dealing with the designation of prison releasee reoffender (“PRR”) and habitual felony offender (“HFO”). He does not specify how the trial court determined that he qualified as a PRR and a HFO.

The HFO designation can apply if a defendant has a qualifying offense committed *either* (1) “[w]ithin 5 years of the date of the conviction of the defendant’s last enumerated felony” or (2) “within 5 years of the defendant’s release from” prison, probation, etc. Fla. Stat. § 775.084(1)(a)2.b. *Almendarez-Torres* would apply where the offense was committed within five years of a prior conviction. In that circumstance, so long as a jury has found the date of the defendant’s current offense, a judge can conclude that the current offense occurred within five years of the prior conviction. That

is because the date of the prior conviction is an essential ingredient of the “fact of a prior conviction” and falls within *Almendarez-Torres*, which itself involved an enhancement that turned on the date of the defendant’s conviction and illustrates a constitutionally permissible application of section 775.084 under *Apprendi* and *Erlinger*. Jones’ facial attack on the constitutionality of section 775.084 thus fails.

The second provision—commission of the current offense within five years of a prior release from a sentence—like the provision for PRR designation under section 775.082(9), Florida Statutes—commission of a qualifying felony within three years of being released from a state correctional facility—is dissimilar to the type of “fact-laden task” presented in *Erlinger*. 602 U.S. at 834. It is ministerial compared to the consideration in *Erlinger* of whether a series of prior offenses qualified as separate offenses under the Federal Armed Career Criminal Act to permit enhanced sentencing, or whether the offenses were part of a single criminal episode. *Id.* The time-release factor may be gleaned from the penalty imposed on the prior offense and the date of the charged offense.

This Court should deny the petition.

CONCLUSION

The petition for a writ of certiorari should be held in abeyance pending this Court’s resolution of *Kian* on the jury issue but should be denied with respect to the challenge to sections 775.082 and 775.084, Florida Statutes.

Respectfully submitted,

JAMES UTHMEIER
*Attorney General of
Florida*

OFFICE OF THE
ATTORNEY GENERAL
State of Florida
1515 N. Flagler Drive,
Suite 900
West Palm Beach, FL
33401
Phone: (561) 837-5016
CrimAppWPB@
myfloridalegal.com

CELIA TERENZIO
*Bureau Chief, Criminal
Appeals
Counsel of Record*
MELYNDA MELEAR
Assistant Attorney General

Counsel for Respondent

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