

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

SEDRIC THOMAS, Petitioner

v.

FLORIDA, Respondent.

**On Petition for a Writ of Certiorari
to the Florida First District Court of Appeal**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THOMAS'S SENTENCE MUST BE VACATED BECAUSE THE COURT RELIED UPON UNCHARGED CONDUCT TO DETERMINE THE SENTENCE IMPOSED AND IN SO DOING VIOLATED THOMAS'S RIGHT TO DUE PROCESS OF LAW.

LIST OF PARTIES

Petitioner is Sedric Thomas, an individual. Petitioner Thomas was the Appellant in the proceeding below. Petitioner does not have a stock ticker symbol.

Respondent is the State of Florida. The State of Florida was the Appellee-Respondent in the proceeding below. Respondent does not have a stock ticker symbol.

RULE 29.6 STATEMENT

Neither Petitioner nor Respondent is a corporation. There is no parent corporation or publicly held company owning 10% or more of the stock of any party to this proceeding.

STATEMENT OF RELATED CASES

The Florida First District Court of Appeals decision, *Sedric Thomas v. Florida*, is found at 2026 Fla. App. LEXIS 2769, 2026 LX 139429, 2026 WL 969831. The decision entered April 10, 2026. A copy of the opinion is included in the attached appendix.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, SEDRIC THOMAS, respectfully prays that a writ of certiorari be issued to review the decision of the Florida First District Court of Appeals in this case.

OPINION BELOW

The Florida First District Court of Appeals decision, *Sedric Thomas v. Florida*, is found at 2026 Fla. App. LEXIS 2769, 2026 LX 139429, 2026 WL 969831. The decision entered April 10, 2026. A copy of the opinion is included in the attached appendix.

JURISDICTION

This Court has jurisdiction to review the decision of the Florida First District Court of Appeals pursuant to Title 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime . . . 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.

STATEMENT OF THE CASE

Sedric Thomas (hereinafter "Thomas") was the criminal defendant below and the petitioner herein. Thomas was charged in a single count information with second degree murder. Thomas proceeded to trial. The jury returned a guilty verdict and Thomas was sentenced to life imprisonment. Thomas filed a timely notice of appeal.

Thomas was charged with second degree murder and convicted of second degree murder. He was sentenced to life imprisonment.

At sentencing the State argued in aggravation of sentence as follows:

Judge, we charged this case as a second degree murder strategically. But you heard the facts and you should consider the facts of this homicide when you impose the sentence. The evidence was that this defendant showed up that day and he knew he was going to be fired or maybe had already been. He was returning company equipment and was armed with a firearm.

He went there upset and killed his boss, a man senior to him, who was unarmed and with no provocation. This defendant approached this unarmed man, pulled out his 40 caliber Smith and Wesson firearm, held it less than an inch from the end of Mr. Pike's nose and pulled the trigger. Mr. Pike was executed that day when he was shot point blank in the face.

. . .

This defendant killed Mr. Pike, murdered him in cold blood in broad daylight, and then comes in here and says that he deserved it. Those allegations were false and the jury found that in their verdict. In Florida we respect the decisions of a jury. This jury found the

defendant guilty of murder with a firearm, that he possessed and discharged, causing death. A life felony. There are no winners today but there can be justice. Life is the only just sentence in this case. It is certainly the only sentence that could bring justice to the Pike family. I ask that Your Honor sentence this defendant to life. (Brief pause.)

(Sentencing Transcript, pp. 40, 41-42)(emphasis supplied)

The State's meaning was clear: the State strategically charged second degree murder because it was easier to prove, but the facts supported first degree murder. The State was telling the Court that the facts established a first degree murder, therefore the appropriate sentence was life. The State argued for a sentence based on uncharged conduct for which there was no jury verdict and this was the sentence the Court imposed.

Thomas's appellate counsel filed a timely Rule 3.800(b) sentencing correction motion objecting to improper arguments made by the state at sentencing. The trial court denied the sentencing correction motion by written order and an appeal thereafter followed to the Florida First District Court of Appeals, which affirmed his conviction and sentence without a written opinion. It is that decision which is the subject of this petition.

REASONS FOR GRANTING THE WRIT

WHETHER THOMAS'S SENTENCE MUST BE VACATED BECAUSE THE COURT RELIED UPON UNCHARGED CONDUCT TO DETERMINE THE SENTENCE IMPOSED AND IN SO DOING VIOLATED THOMAS'S RIGHT TO DUE PROCESS OF LAW.

Thomas was charged with second degree murder and convicted of second degree murder. He was sentenced to life imprisonment. But at sentencing the State in effect argued that Thomas was in fact guilty of first-degree, premeditated murder and as such asked for and received a life sentence. The State argued for a sentence based on uncharged conduct for which there was no jury verdict and this was the sentence the Court imposed.

This argument violated Thomas's right to Due Process of Law and violated his Sixth Amendment right to have any fact that would be used to enhance the sentence be properly charged and found by a unanimous jury verdict based on proof beyond a reasonable doubt. See *Erlinger v. United States*, 602 U.S. 821 (2024). This is not permitted and resentencing before a new Judge who has not been tainted by the State's arguments and consideration of impermissible factors is mandated.

Justice Kavanaugh in his concurrence in *United States v. Bell*, 808 F.3d 926, 927-28 (D.C. Cir. 2015) explained the problem and in effect why certiorari should be granted in this case:

Here's the issue: Based on a defendant's conduct apart from the conduct encompassed by the offense of conviction — in other words, based on a defendant's uncharged or acquitted conduct — a judge may impose a sentence higher than the sentence the judge would have imposed absent consideration of that uncharged or acquitted conduct. The judge may do so as long as the factual finding regarding that conduct does not increase the statutory sentencing range for the offense of conviction alone. The Sixth Amendment's Jury Trial Clause is deemed satisfied because the judge's factual finding does not increase the statutory sentencing range established by the jury's finding of guilt on the offense of conviction. See *Booker*, 543 U.S. at 267 (remedial opinion).¹ And the Fifth Amendment's Due Process Clause is deemed satisfied because a judge finds the relevant conduct in a traditional adversarial procedure. See *McMillan v. Pennsylvania*, 477 U.S. 79, 91-93, 106 S. Ct. 2411, 91 L. Ed. 2d 67 (1986).

Judge Millett cogently expresses her concern about sentencing judges' reliance on acquitted conduct at sentencing. Even though the Sentencing Guidelines are now advisory, rather than mandatory, she advocates barring consideration of acquitted conduct in calculating the advisory Guidelines offense level.

I share Judge Millett's overarching concern about the use of acquitted conduct at sentencing, as I have written before. See, e.g., *United States v. Settles*, 530 F.3d 920, 923-24, 382 U.S. App. D.C. 7 (D.C. Cir. 2008); see also *United States v. Henry*, 472 F.3d 910, 918-22, 374 U.S. App. D.C. 149 (D.C. Cir. 2007) (Kavanaugh, J., concurring). Of course, resolving that concern as a constitutional matter would likely require a significant revamp of criminal sentencing jurisprudence — a revamp that the Supreme Court lurched toward in cases such as *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), but backed away from in its remedial opinion in *Booker*.

Taken to its logical conclusion, the *Blakely* approach would require a jury to find beyond a reasonable doubt the conduct used to set or

¹ *United States v. Booker*, 543 U.S. 220 (2005).

increase a defendant's sentence, at least in structured or guided-discretion sentencing regimes. A judge could not rely on acquitted conduct to increase a sentence, even if the judge found the conduct proved by a preponderance of the evidence. A judge likewise could not rely on uncharged conduct to increase a sentence, even if the judge found the conduct proved by a preponderance of the evidence.

At least as a matter of policy, if not also as a matter of constitutional law, I would have little problem with a new federal sentencing regime along those lines. Allowing judges to rely on acquitted or uncharged conduct to impose higher sentences than they otherwise would impose seems a dubious infringement of the rights to due process and to a jury trial. If you have a right to have a jury find beyond a reasonable doubt the facts that make you guilty, and if you otherwise would receive, for example, a five-year sentence, why don't you have a right to have a jury find beyond a reasonable doubt the facts that increase that five-year sentence to, say, a 20-year sentence? Cf. *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

But that would be a constitutional rule far different from the one we now have or have historically had. As the Supreme Court has said many times: "We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range. . . . For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant." *Booker*, 543 U.S. at 233; see also *Williams v. New York*, 337 U.S. 241, 246-52, 69 S. Ct. 1079, 93 L. Ed. 1337 (1949). To quote a recent case: "While such findings of fact may lead judges to select sentences that are more severe than the ones they would have selected without those facts, the Sixth Amendment does not govern that element of sentencing. . . . We have long recognized that broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment." *Alleyne v. United States*, 133 S. Ct. 2151, 2161 n.2, 2163, 186 L. Ed. 2d 314 (2013).

United States v. Bell, 808 F.3d 926, 927-28 (D.C. Cir. 2015) (Kavanaugh, J.,

Concurring)

The State's sentencing argument violated Thomas's right to Due Process of Law and violated his Sixth Amendment right to have any fact that would be used to enhance the sentence be properly charged and found by a unanimous jury verdict based on proof beyond a reasonable doubt. *See Erlinger v. United States*, 602 U.S. 821 (2024). This is not permitted and resentencing before a new Judge who has not been tainted by the State's arguments and consideration of impermissible factors is mandated.

Justice, then Judge, Kavanaugh in *Bell* explained that it "would be a constitutional rule far different from the one we now have or have historically had" to limit the use of uncharged conduct at sentencing.

Now is the time for this Court to adopt a "far different rule" and prohibit sentencing judges from increasing sentences based on uncharged or acquitted conduct.

CONCLUSION

Based on the foregoing argument, Petitioner Thomas respectfully requests this Honorable Court grant certiorari to decide the above question.

Respectfully submitted,

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