

No.

IN THE SUPREME COURT OF THE UNITED STATES

SCOTT JOSEPH TRADER, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

SCOTT JOSEPH TRADER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-0330

[May 7, 2026]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Lawrence Michael Mirman, Judge; L.T. Case No. 562016CF003220AXXXXX.

Daniel Eisinger, Public Defender, and Gary Lee Caldwell, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Pablo Ignacio Tabia, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

LEVINE, CONNER and SHEPHERD, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

June 22, 2026

SCOTT JOSEPH TRADER,
Appellant(s)

v.

STATE OF FLORIDA,
Appellee(s).

CASE NO. - 4D2025-0330

L.T. No. - 562016CF003220AXXXXX

BY ORDER OF THE COURT:

ORDERED that Appellant's May 22, 2026 "Motion for Rehearing, Written Opinion and Certification" is denied.

Served:

Crim App WPB Attorney General

Gary Lee Caldwell

Rebecca Kelly

Palm Beach Public Defender

St. Lucie Public Defender

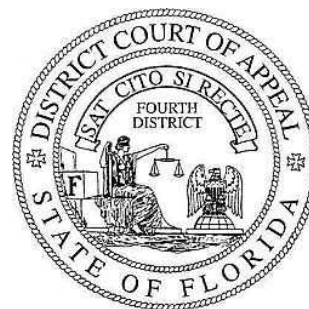
St. Lucie State Attorney

Pablo Ignacio Tapia

HB

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.


LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2025-0330 June 22, 2026



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL
CIRCUIT IN AND FOR ST. LUCIE COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

-VS-

CASE NO. 56-2016-CF-003220-A

Judge: Lawrence M. Mirman

SCOTT JOSEPH TRADER

Defendant.

MOTION REQUESTING TWELVE PERSON JURY

COMES NOW, the Defendant, Pro Se, respectfully moves this Honorable court to grant the defendant a twelve person jury, pursuant to Section 913.10, Florida Statutes, and as entitled by the Sixth and Fourteenth Amendments to the United States Constitution, and States the following in support of said motion:

1. Pursuant to FL Stat 913.10, all capital cases shall be tried by twelve-person juries, and all other cases shall be tried by six-person juries. "Florida law permits, and perhaps even requires, a six person jury in all felony cases for which death is not a possible penalty." *Gonzalez v. State*, 982 So. 2d 77, 81 (2nd DCA 2008). When the charged offenses allegedly occurred, Sexual battery upon a child under twelve, while labelled a "capital felony", was not a capital case under 913.10. "Because the death penalty is no longer possible for crimes charged under Subsection 794.011(2), a twelve-person jury is not required when a person is tried under that statute." *State v. Hogan*, 451 So. 2d 844, 845-46 (Fla 1984). This is no longer true. Section 794.011 was recently

amended, effective October 1, 2023, to allow for death as a possible penalty for violations of Capital Sexual Battery.

On February 15, 2023, the Honorable Judge Lawrence M. Mirman, circuit judge, held a short discussion on whether the offense of Capital Sexual Battery was removed from the Score Sheet and why, as it relates to the instant case. The court questioned whether the offense was truly a capital offense punishable by death, and whether a twelve person jury was required. (Sentencing transcript, pgs 370 - 375). The court then, in sentencing the defendant to the maximum sentence allowed, informed the defendant of the legislature's intent to amend the statute to allow it to be once again punishable by death. (transcript, pg 383). And then told the defendant that he "deserve[d] to die" for his crimes. (transcript, pg 384).

2. In *Guzman v. State*, 380 So. 3d 72, 73 (1st DCA 2022), the 4th DCA concluded that a six person jury was constitutional in a case where the defendant was convicted of capital sexual battery. However, at that time, sexual battery of a child under twelve was not punishable by death. See: *Morales-Alarcon v. State*, 376 So. 3d 791 (2023) (2nd DCA) (Same). Nevertheless, while it is true that the law in place at the time of the crime controls the penalty, the defendant asserts "that the original public meaning of the Sixth Amendment right to a trial by an impartial jury includes the right to a 12 person jury." *Guzman*, 380 So. 3d at 78, and therefore Florida's six person jury requirement violates the sixth and fourteenth amendments to the United States constitution. The defendant asserts this based on the U.S. Supreme court's ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020) which concluded 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. The Ramos court did not address Williams v. Florida, 399 U.S. 78 (1970) which held six person juries constitutionally permissible, but it did contain references to the common law requirement of a 12 person jury and suggests that the Sixth Amendment affords a right to the essential elements of a trial by jury as understood and applied at common law. See: Ramos, 140 S.Ct 1395-97. This interpretation prompted Justice Gorsuch's dissent in Khourami v. Arizona, 588 U.S. —, 143 S.Ct 22 (2022) in which cert was denied on petition asking if a defendant is entitled to a twelve person jury before he may be constitutionally convicted under the Sixth amendment. The defendant agrees with Justice Gorsuch. Based on Ramos, and because a trial by jury of six is unconstitutional, the defendant asserts Williams was wrongly decided.

Because the defendant is charged with a capital crime, punishable by death under FL Statutes 913.10 and 794.011, and because the Sixth amendment and the Fourteenth amendment to the United States Constitution requires such, the defendant respectfully requests this Honorable Court to grant him a twelve person jury trial.

Respectfully Submitted,

ISI Scott Trader

SCOTT TRADER, Pro Se

Inmate No. 52698

SLC Jail

900 North Rock Road

Ft. Pierce, FL 34945

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of
September, 2024, I mailed through the SLJ Jail legal mail
System, 2 copies to be furnished to:

Clerk of Court for St Lucie County
P.O. Box 700, Fort Pierce, FL 34954

Office of the State Attorney
111 South 2nd Street, Fort Pierce, FL 34950

131 Scott Trader

SCOTT TRADER, Pro Se

Inmate # 52898

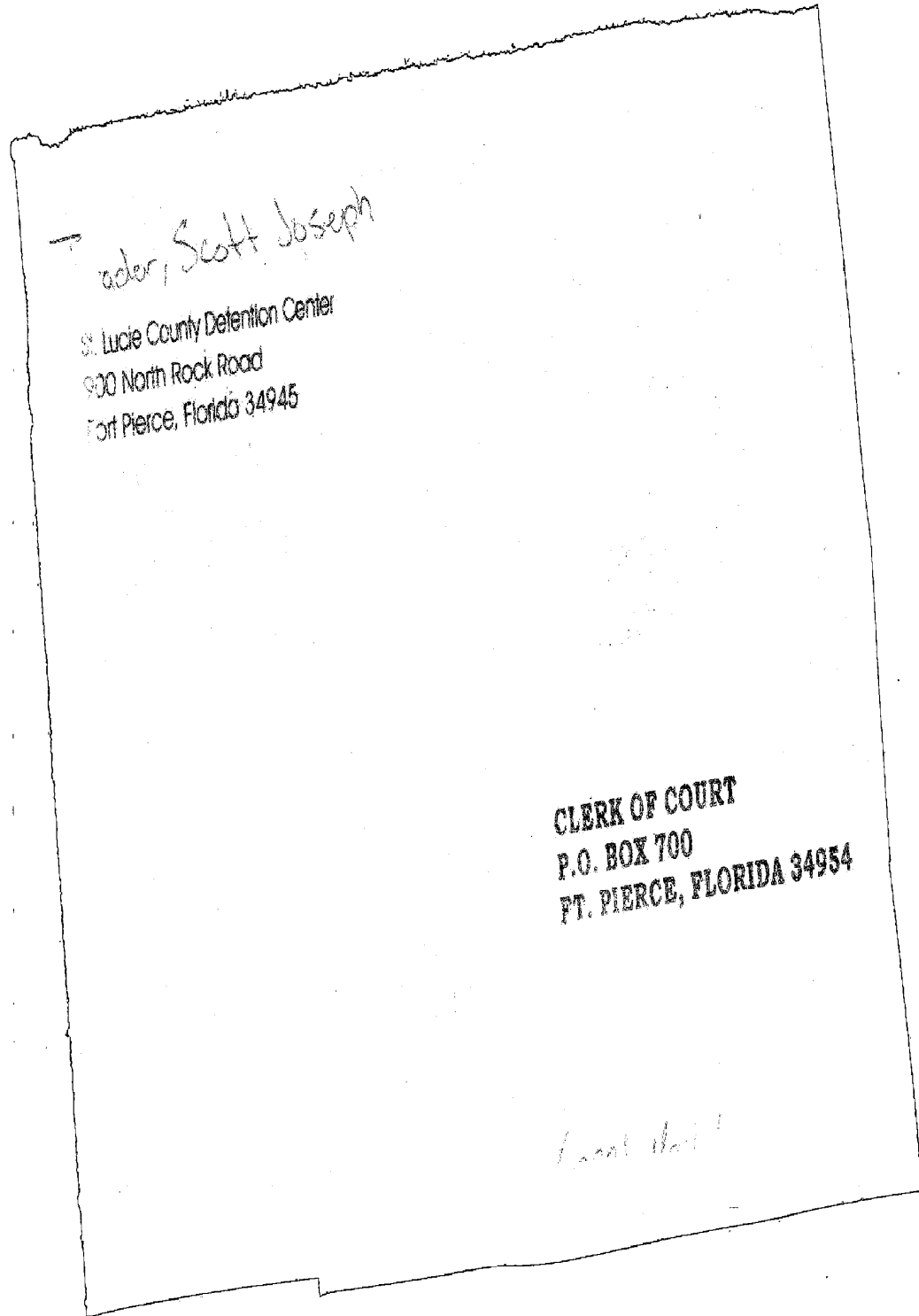
SLJ Jail

900 North Rock Road

Fort Pierce, FL 34945

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St. Lucie County File Date: 09/19/2024 03:44 PM

1 process that you have to go through to get -- to be able to
2 take their depositions. So the State's -- he doesn't need a
3 motion to depose them. I mean, representing himself, he has to
4 be treated like a lawyer would. He has to --

5 THE COURT: It's one of the dangers of
6 self-representation that I --

7 MS. REID: Yes, sir.

8 THE COURT: -- advised the Defendant of and all
9 defendants. It's harder to do things when you represent
10 yourself.

11 MR. TRADER: Mm-hmm.

12 MS. REID: But as far as the minor victim, the State
13 is objecting to her deposition. Florida Statute 92.55
14 prohibits taking minor depositions in sexual cases without
15 order from the Court saying that there's special reasons that
16 her deposition needs to be taken. He has not filed the proper
17 motion. We have not had that hearing for Your Honor to
18 determine whether or not it's appropriate to take her
19 deposition. So at this time State would object to him being
20 permitted to do that.

21 THE COURT: All right. I'll take that motion under
22 advisement, as well, and rule in chambers.

23 And motion requesting 12-person jury.

24 MR. TRADER: Yes.

25 THE COURT: Mr. Trader?

1 MR. TRADER: Okay. So this is a twofold argument.
2 I'm charged with capital offenses. Now --

3 THE COURT: At the time they weren't capital, though.
4 Right?

5 MR. TRADER: At the time -- at the time they weren't
6 considered capital, though. Capital was in the title, yes.

7 THE COURT: Yeah. Although, that's kind of a relic
8 that --

9 MR. TRADER: Yeah.

10 THE COURT: Yeah. The -- and when they say that's a
11 relic --

12 MR. TRADER: So --

13 THE COURT: -- it used to be capital, then it wasn't,
14 and the term capital never came off the name of the charge in
15 the colloquial use of the term. But at the time you allegedly
16 committed these offenses in 2016, they were not actually
17 punishable by death, is what I mean.

18 MR. TRADER: By -- by death, yes.

19 THE COURT: But go ahead. Go ahead.

20 MR. TRADER: They are now. And although the law at
21 the time of the crime is precedent, I'm actually arguing -- and
22 again, this is a twofold argument -- that my right to a
23 12-person jury extends beyond the capital offenses to all the
24 offenses based on the United States Supreme Court's previous
25 rulings over the last 20 years.

1 But specifically, *Ramos v. Louisiana*, they're
2 giving -- the United States Supreme Court is now giving more
3 attention to what the 12-person jury requirement meant at the
4 time of the framer's -- the Constitution was framed. And so
5 even though *Ramos v. Louisiana* wasn't squarely on -- on point,
6 it ruled about un-unanimous juries. There are specific times
7 in that case where the court made mention of the fact that they
8 are ruling now in favor of the law at the time that the
9 Constitution was created.

10 And two years ago, there was a case that went before
11 the Supreme Court for writ of cert, and it got denied. But two
12 of the Supreme Court justices dissented, Kavanaugh and Gorsuch.
13 And Gorsuch wrote a four-page -- an extensive opinion on here
14 about how *Williams v. Florida* was wrongly decided. And I
15 happen to agree with him. So it's my stance at the time that
16 all serious offenses -- felony offenses in the State of Florida
17 should require 12-person juries.

18 THE COURT: And the State's response?

19 MS. REID: Under Florida law, the only time you're
20 entitled to a 12-person jury is when you are facing a crime
21 that's punishable by death, though capital sexual battery is
22 now punishable by death, when we try his case, he is not
23 subject to that possible penalty because his crimes happened
24 before. So based on that, the State does not agree with the
25 Defendant's analysis and does not believe he's entitled to a

1 12-person jury.

2 THE COURT: I will take that under advisement with
3 the other motions and rule in chambers on that one.

4 The next one is motion to exclude federal agents,
5 Mr. Trader?

6 MR. TRADER: Okay. So this one involves collateral
7 estoppel. Okay. I signed a plea agreement in federal court
8 for the federal government to not prosecute me. I pled guilty
9 to five offenses. Two of them are relevant here. Count 4 and
10 5 in my federal case are for production of child pornography.
11 They involve, I'm assuming, the same videos that I'm charged
12 with because, I mean, I have not seen any of the evidence
13 despite what Ms. Reid has said. And so I'm assuming that it's
14 the same videos that I'm allegedly charged with.

15 But the fact of the matter is that in my last
16 trial -- and I'm assuming it's the same way now with the
17 State's -- what the State's plan is here -- is that two federal
18 agents are going to testify, which is by all means fine.
19 However, the State had at their table a federal agent as an
20 expert handling all of the evidence in this case. And when I
21 say handling everything, I mean playing all the videos,
22 controlling the PowerPoint presentation that the jury saw,
23 closing arguments. I mean the federal government was hand in
24 hand with the State in this case, which I'm sorry, just pours
25 out the possibility of privity here. And so it is my position

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, STATE OF FLORIDA**

STATE OF FLORIDA

Case No. 2016CF003220 A

Plaintiff,

Judge Mirman

-VS-

SCOTT JOSEPH TRADER

Defendant.

ORDER ON PRO-SE MOTIONS AFTER HEARING

This matter came before the court on motions filed by the Pro-Se Defendant.

The court has previously conducted a full Faretta inquiry and determined that the Defendant is able to represent himself and chooses to do so. The offer of counsel has been renewed at each critical stage, including the litigation of these motion.

- 1) Motion for Statement of particulars: This case has already been litigated to trial, only to be reversed because of improper joinder. The Defendant is well aware of the nature of the charges. No statement is warranted. Wherefore, the motion is DENIED.
- 2) Motion to depose the children: The court has considered 1) the mental and physical age and maturity of the victim(s). These charges involve victims who were of tender years at the time of abuse. 2) The nature and duration of the offense and the relationship of the Defendant to the victim(s): the nature of the abuse was allegedly by the Defendant, a parent of these young children. 3) The complexity of the issues involved and any other factors the court deems relevant to ensure the protection of the victim and the integrity of the judicial process.. This weighs heavily against deposition. The only

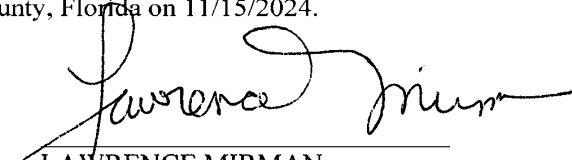
real question is identity of the perpetrator. The prosecution at the first trial did not even involve the victims' testimony: the victims did not testify. 4). Whether the evidence sought is reasonably available by other means, including whether the victim was the subject of a forensic interview related to the sexual offense. In relation to this issue, there is simply no legitimate purpose to deposition. The Court is of the opinion that the Defendant seeks deposition only for illegitimate purposes. Wherefore, the motion is DENIED. There is nothing prohibiting the Defendant from deposing other witnesses and the Court is unaware of why the Defendant brought the motion. The Court is not precluding any such depositions.

- 3) Motion requesting a twelve person jury. At the time of the alleged crimes, the offense were not punishable by death. This issue was previously raised by the Defendant in this court and on appeal from the original trial. The Court denied the request and that ruling was affirmed on appeal without comment. Once again, the request is DENIED.
- 4) Motion to exclude federal agents: The motion is completely without merit and is DENIED without further comment.
- 5) Motion to compel discover: pursuant to Fla. R. Crim. P. 3.220, "any property or material that portrays sexual performance by a child, constitutes generated child pornography, or constitutes child pornography may not be copied, photographed, duplicated, or otherwise reproduced so long as the state attorney makes the property or material reasonably available to the defendant." In this case there was already a jury trial in which the Defendant was, of course, physically present. The child pornography videos in question were repeatedly published in court in the presence of the jury, the

Defendant and the court. Now, upon retrial, the Defendant has exercised his right of self representation. The Court is of the opinion that he has done so largely to make requests such as this one in order to satisfy his prurient sexually deviant interests. The is exactly what the law prohibits. The Court notes, to assist appellate review, that during the first trial, the Court's bailiff advised the Court, after the videos were published to the jury, that during the playing of the child pornography, the Defendant was observed by the bailiff masturbating under counsel table. Regardless, the law has been satisfied: the items have been made reasonably available to him for purposes of litigation. Further, the items were reviewed by the Defendant's former attorneys, who counseled him. The request is DENIED. As to other discovery, the Court finds, based upon the state's representations that the state has complied with discovery.

- 6) Motion to Suppress Evidence: It has long been the law that Defendants who challenge a search conducted pursuant to a warrant have the burden of demonstrating the illegality of the search and a violation of their reasonable expectation of privacy. *State v. Bell*, 417 So. 2d 822, 823 (Fla. 4th DCA 1982). Here, the Defendant did not meet his burden with evidence. Wherefore, this motion is DENIED.

DONE AND ORDERED at St. Lucie County, Florida on 11/15/2024.



LAWRENCE MIRMAN
CIRCUIT JUDGE

E-FILED

VI. APPELLANT WAS DEPRIVED OF HIS RIGHT TO A
TWELVE-MEMBER JURY.

Appellant filed a motion for a twelve-member jury under the Sixth and Fourteenth Amendments. R 800–04. The court denied the motion. R 821.

Appellant acknowledged in his written objection, R 801–02, and here acknowledges, that Florida law authorizes trials by six-member juries, and that the Supreme Court held in *Williams v. Florida*, 399 U.S. 78 (1970), held they are allowed under the federal constitution.

Appellant submits that *Williams* was incorrectly decided and is contrary to the understanding of the Sixth Amendment at the time of the Founding. *See Cunningham v. Florida*, 144 S. Ct. 1287–88 (2024) (Gorsuch, J., dissenting from denial of certiorari). Accordingly, section 913.10, Florida Statutes, which authorizes six-member juries in non-capital criminal cases, is facially unconstitutional.

Appellant also recognizes that this Court has rejected similar claims. *See, e.g., Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022). Nonetheless, he maintains that the correct view is set out in

Justice Gorsuch's dissent in *Cunningham*.

Even if Appellant were raising the issue for the first time on appeal, the error would be fundamental. Waiver of the constitutional right of trial by the proper number of jurors must be made personally by the defendant. *See Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997) (finding valid defendant's agreement to verdict by five-member jury valid when made "in a colloquy at issue here, including a personal on-the-record waiver," and sufficient to pass muster under the federal and state constitutions," and his decision was made "toward the end of his trial, after having ample time to analyze the jury and assess the prosecution's case against him. He affirmatively chose to proceed with a reduced jury as opposed to a continuance or starting with another jury.") and *Wallace v. State*, 722 So. 2d 913 (Fla. 2d DCA 1998) (reversing on grounds of fundamental error where defendant was tried by five-member jury and judge did not inform the defendant of his right to six-person jury).

Appellant recognizes that this Court wrote in *Albritton v. State*, 360 So. 3d 1145 (Fla. 4th DCA 2023):

The defendant did not raise this argument in the trial court. Therefore, the defendant did not preserve this argument. *See Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005) (proper preservation requires a litigant to make a timely, contemporaneous objection to place the trial court on notice that error may have been committed and provide the trial court with an opportunity to correct the error at an early stage of the proceedings).

Id. at 1147.

Appellant respectfully submits that this statement in *Albritton* is flawed.

First, it is contrary to *Blair* and *Wallace*. Under those cases, the waiver of a constitutionally-required number of jurors must be made by the defendant personally after being informed of the right being relinquished.

Second, the *Harrell* case cited in *Albritton* involved a run-of-the-mill pleading issue. It did not involve the denial of a constitutional right.

Third, the Sixth Amendment jury right is tightly bound with the Due Process Clause — *see Erlinger v. United States*, 602 U.S. 821, 831 (2024), and issues of due process rights and other issues of the facial constitutionality of a statute may be raised as fundamental error. *See, e.g., Edenfield v. State*, 379 So. 3d 5, 7 n.1

(Fla. 1st DCA 2023) (conviction based on facially invalid statute is fundamental error); *State v. Johnson*, 616 So. 2d 1, 3–4 (Fla. 1993) (holding a defendant may raise the constitutionality of a sentencing statute for the first time on appeal); *Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004) (same); *Chang v. State*, 50 Fla. Law Weekly D1073, D1079 (Fla. 2d DCA May 14, 2025) (“Consideration of improper sentencing factors constitutes a due process violation that results in fundamental error.”); *Reed v. State*, 837 So. 2d 366 (Fla. 2002) (erroneous jury instruction on contested element constitutes fundamental error); *Santiago-Gonzalez v. State*, 301 So. 3d 157, 175 (Fla. 2020) (fundamental error may apply where there has been “a denial of due process”); *Wallace*.

In the present case, reversible error occurred and the convictions and sentences should be reversed.

CONCLUSION

For the foregoing reasons, the convictions and sentences should be reversed, and the case should be remanded to discharge Appellant or to afford him a new trial.

DANIEL EISINGER
Public Defender
Fifteenth Judicial Circuit