

IN THE SUPREME COURT OF THE UNITED STATES

CURTIS W. BEASLEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A
WRIT OF CERTIORARI

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ARGUMENTS IN REPLY AND REBUTTAL

I. The 35 Day Time Period Between the Signing of the Death Warrant and the Scheduled Execution Deprives Mr. Beasley of Due Process, Equal Protection, and to be Free From Cruel and Unusual Punishment

The State of Florida is seemingly attempting to argue that this Court does not have a valid basis to hear the question presented. That is simply not correct.

As Mr. Beasley set out in his Petition, Florida is unique in its current and now standard implementation of execution windows of 35 days or less. As set forth in the Petition, the national standard is typically at least 60 to 90 days between the signing of a death warrant and an execution date. TEX. CODE CRIM. PROC. ANN. Art. 43.141(c) (2015) (minimum of 90 days for warrant period); MO. SUP. CT. R. 29.08 (2014) (90-120 days for the warrant period); OKLA. STAT. ANN. Tit. 22, § 1001 (2025) (minimum of 60 days for warrant period); LA. STAT. 15:567(B) (2024) (same). Florida, to be sure, typically followed such a time frame in executions in recent years. *See e.g. Bolin v. State*, No. SC02-37 (Fla. Nov. 2, 2015) (death warrant signed on October 30, 2015, and execution scheduled for January 7, 2016). In recent executions, however, Florida has followed a standard practice of setting windows of 35 days or less between a death warrant and an execution. The Florida Supreme Court recognized as such in its opinion below.

The question of whether the 35 day execution is sufficient to afford a condemned inmate due process and equal protection is a critically important and unsettled question. Rule 10(c) of the Rules of the Supreme Court provides, as an example of a question that warrants review on certiorari, “(c) a state court or a United

States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court...” SUP. CT. R. 10(c).¹ The Florida Supreme Court’s decision below decided the important federal question at issue. That question has not been settled by this Court but should now be, particularly in light of Florida’s outlier status in setting execution windows of 35 days or less.

The State of Florida is now pushing every constitutional boundary imaginable in carrying out executions. In addition to carrying out executions at a pace never before seen in modern times, and in addition to its trend of executing elderly inmates who are already nearing natural death, Florida has begun scheduling executions within approximately one month of signing a death warrant. That unreasonably short time frame is insufficient to allow any reasonably effective counsel adequate time to investigate post-conviction claims that arise when a warrant is signed. Indeed, while the State claims that Mr. Beasley has shown no “viable claim that he was prevented from raising,” he has consistently set out that his court appointed mental health expert was not able to complete all of the testing that she needed to complete prior to the deadline for filing post-convictions claims in the state court. That testing bore directly on the Eighth Amendment claim that Mr. Beasley raised, but that the state court denied an evidentiary hearing on. Moreover, while counsel did not learn of a basis to question Mr. Beasley’s competency, it remains to be seen what the expert’s further testing might have revealed in that regard. In the end,

¹ Moreover, it is worth noting that the examples provided for in Rule 10 are prefaced with: “[t]he following, although neither controlling nor fully measuring the Court’s discretion, indicate the character of the reasons the Court considers.” SUP. CT. R. 10.

execution windows of 60 to 90 days already trigger “stop everything else, all hands on deck” extreme litigation.² Shortening that window to 35 days or less is simply untenable. The instant question is therefore an important federal question that has not been but should be addressed by this Court.

II. Florida’s Conformity Clause Violates the Eighth Amendment and Deprives Defendants of Due Process

Contrary to the State’s claim, the instant question was properly preserved below and is properly raised in this Court. When Mr. Beasley raised his claim in the state post-conviction court, he specifically asserted that the conformity clause does not prevent Florida courts from deciding Eighth Amendment issues that have not been addressed by this Court, but which stem from prior constitutional decisions of the Court. He further argued that, were the conformity clause to impose such a prohibition, it would render the Florida’s Supreme Court’s constitutionally imposed mandatory jurisdiction to review death sentences futile because it would bar any new Eighth Amendment claims from being raised. He then made those same arguments in the Florida Supreme Court. The Florida Supreme Court recognized Mr. Beasley’s position when it stated in its opinion, “Although Beasley suggests otherwise, we are bound here by the Eighth Amendment conformity clause set forth in article I, section 17 of the Florida Constitution.” App. A at 11.

² The state circuit court recognized the arduous pace of under warrant litigation when it responded to a collateral party’s late response to a records request made by Mr. Beasley: “These proceedings are serious business and the litigation schedule is *insane*. I don’t give myself a break. I don’t tend to give the lawyers a break.”

Under Mr. Beasley’s proposed interpretation of the conformity clause, the clause arguably might not be unconstitutional. To be sure, prior to 2020 and the Florida Supreme Court’s decision in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), the Florida Supreme Court seemingly interpreted the conformity clause as Mr. Beasley proposed. As the instant case demonstrates, however, it now views the conformity clause as a complete bar to any Eighth Amendment claims that this Court has not addressed “on point.” Mr. Beasley’s claim below was one such claim. Despite Mr. Beasley arguing that the conformity clause did not bar the review of the claim, the Florida Supreme Court found otherwise. The constitutionality of the Florida’s conformity clause is, therefore, a question that was preserved below and is now properly before this Court on a petition for a writ of certiorari.

As to the merits of the question, this is not a question, as the State suggests, of whether “a state must grant greater protections than the United States Constitution or this Court’s precedent require.” Response Brief at 15. Quite the opposite, the question is whether Florida’s conformity clause’s restriction on raising Eighth Amendment claims lessens the protections of the Eighth Amendment. Under the Florida Supreme Court interpretation of the conformity clause, it certainly does. As applied by the Florida Supreme Court, the clause prohibits any Florida courts from addressing any “new” Eighth Amendment claims. Consequently, any time Florida passes a law or implements a procedure that arguably results in cruel and unusual punishment, a defendant cannot invoke the protections of the Eighth Amendment unless this Court has directly ruled upon the claim at issue. The

conformity clause, therefore, strips away protections of the Eighth Amendment. For those reasons, and contrary to the State's position, the instant question is certainly an important question of federal law.

III. Executing Mr. Beasley Despite a Non-Unanimous Jury Verdict Would Violate the Fifth, Sixth, and Eighth Amendments

The State is incorrect that the instant question is procedurally barred because it was rejected on independent and adequate state law grounds. To be sure, the Florida Supreme Court did hold that the ground was procedurally barred because Mr. Beasley raised the lack of unanimity issue post-*Hurst*.³ Mr. Beasley recognized as such in the lower courts and in this Court. Critically, however, the Florida Supreme Court went on to address and rule on the merits of the claim. App. A at 20-22. Furthermore, in doing so, the Florida Supreme Court recognized that Mr. Beasley relied, in part, on *Ramos v. Louisiana*, 590 U.S. 83 (2020), which was decided after Mr. Beasley's previously raised lack of jury unanimity claim. Had the Florida Supreme Court merely found the claim to be procedurally barred, the State's position might hold water. But the court went on to fully address the merits of the claim.

As to the merits of the issue, and as this Court is likely well aware, Florida is again an outlier in permitting a death sentence on only an eight vote majority. As Mr. Beasley set out in his Petition, allowing a death verdict on a less than unanimous vote is entirely inconsistent with the historical traditions in place at the time of the Nation's founding.

³ *Hurst v. Florida*, 577 U.S. 92 (2016); *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) *overruled by State v. Poole*, 297 So. 3d 487 (Fla. 2020).

On another note, the State is entirely incorrect in its argument that the jury unanimously found an aggravating factor. The jury's penalty phase verdict in this case was as simple as this:

ADVISORY SENTENCE

A majority of the Jury, by a vote of 10 to 2, advise and recommend to the Court that it impose the death penalty upon Curtis W. Beasley.

So says the Jury this 26 day of February 1998.

The jury was not asked to make any findings to the existence of aggravating factors, let alone to do so unanimously. While the jury did find Mr. Beasley guilty of a count of robbery in phase one of the trial, the jury did not find that the robbery was committed in the course of the murder. Mr. Beasley was specifically charged with premeditated first-degree murder. The phase one verdict form, moreover, did not ask the jury to make a finding as to whether it was convicting Mr. Beasley of premeditated murder as charged or under any potential alternative theory of felony murder. Consequently, it is highly likely that the jury found the robbery and murder to be separate acts. Because the jury was never asked to make any such findings, we can only now speculate as to what the jury found.

Again, more importantly, the jury did not make *any* findings as to aggravating factors in its verdict. It remains to be seen whether all 12 of the jurors found that the murder was committed in the course of robbery and that that purported fact was sufficient to qualify as an aggravating factor that could give rise to a death sentence. Furthermore, while the trial court made a finding of the felony murder aggravating factor, that factor merged under Florida law with the "for pecuniary gain" factor. In

the end, the Florida Supreme Court's finding that the claim is meritless because the jury found Mr. Beasley guilty of a robbery is a finding that rests on a mountain of speculation. Because the jury did not make any unanimous findings as to the existence of aggravating factors or otherwise, the death verdict violates the Sixth and Eighth Amendments.

IV.

Florida's Death Warrant Selection and Signing Procedure Results in the Arbitrary and Capricious Implementation of the Death Penalty in Violation of the Eighth Amendment and Deprives Defendants of Due Process as Guaranteed Under the Fifth and Fourteenth Amendments

The State again argues that this question should not be taken up by this Court because it was rejected on independent and adequate state law grounds. Again, that is not the case. The state post-conviction court found that the claim was untimely and procedurally barred because it was not raised on direct appeal. The Florida Supreme Court, though finding that "[t]he circuit court did not err in denying this claim," did not discuss the alleged procedural bars. App. A at 17. Instead, the court went on to address the issue on its merits and rejected the claim based on prior Florida Supreme Court holdings that addressed the same issue on the merits. App. A at 17-19.

Furthermore, even assuming the Florida Supreme Court may have held, without saying so, that the claim was untimely and/or procedurally barred, those state law grounds would have been independent, but they would not have been adequate. Mr. Beasley could not have raised the instant issue prior to a death warrant being signed. Mr. Beasley had no way to know what protocol would be used

in selecting him to be executed. To this day, he still does not know. As set forth in prior arguments, no rational reasons exists as to why Mr. Beasley would have been selected over condemned inmates with older cases, more and weightier aggravating factors, and less weighty mitigating circumstances. Indeed, the arbitrary and capricious selection of Mr. Beasley's case for the signing of a death warrant is the very heart of this claim. The process by which his case was chosen remains a secret. Until the Governor selected Mr. Beasley to be executed, the facts on which this claim is predicated were unknown and could not have been known to Mr. Beasley.

Moreover, were Mr. Beasley to have raised the instant claim prior to a death warrant being signed, it would have been premature under Florida law. "Article V, section 1 of the Florida Constitution vests '[t]he judicial power' in Florida's courts, and Florida's courts, including its appellate courts, reserve the exercise of judicial power for cases involving actual controversies. This limitation on the exercise of judicial power to justiciable controversies is rooted in judicial adherence to the doctrine of separation of powers." *Casiano v. State*, 310 So. 3d 910, 913 (Fla. 2021). Indeed, the facts giving rise to this claim did not come to pass until the Governor issued his death warrant for Mr. Beasley. Unless and until the Governor selected Mr. Beasley for a death warrant, his post-conviction claim concerning the selection process would not have been ripe for consideration. For that simple reason, his claim was neither untimely nor procedurally barred.

CONCLUSION

Based on the foregoing, the Petitioner, Curtis W. Beasley, respectfully requests that this Honorable Court issue a stay of his execution and grant this petition for a writ of certiorari.

Respectfully Submitted on this 28th day of September 2026,

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