

No.

IN THE SUPREME COURT OF THE UNITED STATES

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Leonard Paul Moody, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

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**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI**

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**LEONARD PAUL MOODY,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D2025-1565

[June 4, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Sherri Lyn Collins, Judge; L.T. Case No. 502021CF008640AXXXMB.

Daniel Eisinger, Public Defender, and Jeffrey L. Anderson, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Zi Jin Peter Chan, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

*Affirmed.*

KLINGENSMITH, SHEPHERD and LOTT, 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

July 14, 2026

LEONARD PAUL MOODY,  
Appellant(s)

v.

STATE OF FLORIDA,  
Appellee(s)

**CASE NO. - 4D2025-1565**

L.T. No. - 502021CF008640AXXXMB

**BY ORDER OF THE COURT:**

ORDERED that Appellant's June 15, 2026 motion for rehearing and written opinion is denied.

Served:

Jeffrey L. Anderson

Crim App WPB Attorney General

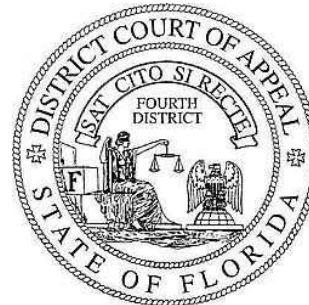
Lily Marie Qian Boehmer

Zi Jin Peter Chan

KTH

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

  
**LONN WEISSBLUM, Clerk**  
**Fourth District Court of Appeal**  
4D2025-1565 July 14, 2026



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

FELONY DIVISION: U  
CASE NO.: 50-2021-CF-008640-XXXX-MB

STATE OF FLORIDA,

vs.

LEONARD PAUL MOODY,  
Defendant.

\_\_\_\_\_ /

**ORDER DENYING DEFENDANT'S MOTION TO CORRECT SENTENCING ERROR**

**THIS CAUSE** came before the court on Defendant's Motion to Correct Sentencing Error ("Motion"), filed on November 12, 2025, pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). (DE # 538). The court carefully reviewed Defendant's Motion, the case file, and is otherwise fully advised in the premises.

In his Motion, Defendant argues that his \$525,000 fine constitutes an excessive punishment under the Excessive Fines Clause. Defendant asserts that the fine provisions of section 893.135(f)(1) are unconstitutional on their face and as applied to the indigent defendant. The Florida and United States Constitution both prohibit the imposition of excessive fines. In determining whether a fine is excessive, courts apply a proportionality analysis, which includes factors such as (1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed, (2) other penalties authorized by the legislature or sentencing commission, and (3) the harm caused by the defendant. *Gordon v. State*, 139 So.3d 958 (2014). In *Gordon v. State* the court upheld a \$500,000 fine for drug trafficking, noting that the fine was not grossly disproportionate to the offense and was part of a broader set of mandatory penalties, including a 25-year minimum prison sentence. Here, Defendant was found guilty of trafficking in

Fentanyl, 28 grams or more, and his conviction carried a twenty-five (25) year mandatory minimum. (Ex. “A,” Judgment). Defendant was sentenced to the Department of Corrections for thirty (30) years, with 1557 days credit and ordered to pay a \$525,000 fine. (Ex. “B,” Sentence Order, Cost Order). There is a strong presumption that the amount of a fine is not unconstitutionally excessive if it lies within the range of fines prescribed by the legislature. *State v. Cotton*, 198 So.3d 737 (2016). In analysis of whether a fine is excessive in violation of the excessive-fines clause, the court should grant substantial deference to the legislature’s determination of the appropriate punishment for an offense. *Martinez v. City of Lantana*, 410 So.3d 15, (2025).

The indigency of a defendant does not automatically render a fine excessive under constitutional standards. In *King v. State*, the court held that the mere fact of a defendant's indigency is not sufficient to challenge a fine. 445 So.2d 1108 (1984). However, the Florida Supreme Court has recognized that the Equal Protection Clause prohibits converting a fine into imprisonment solely because of a defendant's inability to pay due to indigency. *Rollins v. State*, 299 So.2d 586 (1974). Courts may allow installment payments or other methods to collect fines from indigent defendants. *Id.* Florida courts generally uphold statutory fines unless they are grossly disproportionate to the offense or shock the conscience. Defendant's indigency alone does not invalidate the fine, but courts may consider the defendant's financial status when determining the method of payment. Thus, the court finds this fine was not unconstitutionally excessive.

Accordingly, it is hereby

**ORDERED** that Defendant’s Motion is **DENIED** without further hearing. Defendant has the right to appeal this Order within thirty (30) days of its rendition.

There being no further business before the court, the clerk is hereby directed to close the case.

**DONE AND ORDERED**, in Chambers at West Palm Beach, Palm Beach County, Florida  
this 12<sup>th</sup> day of December 2025.



502021CF008640AXXXMB 12/12/2025  
Cymonie S. Rowe  
Circuit Judge

Copies To:

| Name                     | Address                                      | Email                      |
|--------------------------|----------------------------------------------|----------------------------|
| Assistant State Attorney |                                              | e-postconviction@sa15.org  |
| JEFFREY ANDERSON         | 421 3rd St West Palm<br>Beach, FL 33401-4203 | janderson@pd15.state.fl.us |

3d 967, 970-72 (Fla. 4th DCA 2020); *see also United States v. Walters*, 913 F.2d 388, 392 (7th Cir.1990).

Appellant's conviction and sentence must be reversed and this cause remanded for a new trial.

#### POINT VI

THE FINE PROVISIONS OF SECTION 893.135(1)(C)4A & B(III) AND THE SURCHARGE PROVISIONS OF SECTION 938.04 ARE UNCONSTITUTIONAL FACIALLY AND AS APPLIED AS THEY DO NOT PROVIDE FOR THE INDIVIDUALIZED PROPORTIONALITY AND ABILITY-TO-PAY ASSESSMENTS REQUIRED BY THE EXCESSIVE FINE CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

Appellant was found and adjudicated guilty of trafficking in fentanyl 28 grams or more R285.

On June 2, 2025 Appellant was declared insolvent by the lower court R307.

At sentencing on May 29, 2025 the trial court imposed a thirty year sentence with a 25 year mandatory minimum and a \$525,000 fine along which included a 5% surcharge R295-299,305. Appellant filed a motion to correct sentencing error as to the fine and surcharge R569-602. The trial court entered an order denying the mo-

tion R603-605.

Challenges to costs and fines are properly raised in a motion to correct sentencing error pursuant to rule 3.800(b)(2). *Thomas v. State*, 276 So.3d 360 (Fla. 1st DCA 2011); *Dabel v. State*, 79 So.3d 873, 874 (Fla. 4th DCA 2012); *Nix v. State*, 84 So.3d 424, 425 (Fla. 1st DCA 2012).

Further, a sentence imposed pursuant to an unconstitutional sentencing provision constitutes fundamental error. In *State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *See also Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004).

“The constitutionality of a statute is a pure question of law subject to de novo review.” *City of Fort Lauderdale v. Dhar*, 185 So. 3d 1232, 1234 (Fla. 2016).

The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed ... .” U.S. Const. amend. VIII. The Florida constitution likewise forbids excessive fines: “Excessive fines ... are forbidden.” Fla. Const. Art. I, § 17. The Excessive Fines Clauses arise from the common law. *See U.S. v. Bajakajian*, 524 U.S. 321, 335–36 (1998) (discussing common law background of Excessive Fines Clause); *City of Seattle v. Long*, 493 P.3d 94, 111–

13 (Wash. 2021) (detailing common law leading up to adoption of Excessive Fines Clause).

The fine provisions of section 893.135(1)(c)4.a &b(III) are unconstitutional under the state and federal Excessive Fines Clauses.

The statute provides in part:

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

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(III) Fentanyl, as described in s. 893.03(2)(b)9.;

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b. If the quantity involved under sub-subparagraph a.:

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(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000.

Further, section 938.04, Florida Statutes, adds a 5% surcharge.

These fine provisions are unconstitutional under the Excessive Fines Clauses of the state and federal constitutions because the statute provides for no individualized assessment of whether the fine is disproportionate to the defendant's crime and does not provide

for any consideration of the defendant's ability to pay.

**There must be individualized determination of the proportionality of the fine**

In *U.S. v. Bajakajian*, 524 U.S. 321, 327 (1998), the defendant plead guilty to failure to report exported currency in the amount of \$357,144.

The relevant statute provided that the sentencing court “shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.” *Id.* at 325 (quoting 18 U.S.C. § 982(a)(1)).

The federal trial court ruled that the amount violated the Excessive Fines Clause and reduced the forfeiture amount to \$15,000. *Id.* at 326. On appeal by the government, the judge's ruling was affirmed by the Court of Appeals. *Id.* at 326-27. The Supreme Court granted review and also ruled for the defendant.

The Supreme Court made clear that, although the sanction was termed a “forfeiture,” it operated as a fine for purposes of the Excessive Fines Clause because it was imposed as a punishment:

The Excessive Fines Clause thus “limits the government's power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’ ” *Austin v. United States*, 509 U.S. 602, 609–610 (1993) (emphasis deleted).

Forfeitures—payments in kind—are thus “fines” if they constitute punishment for an offense.

*Id.* at 328. See also *Austin v. United States*, 509 U.S. 602, 623–24 (1993) (Scalia, J., concurring) (noting that “forfeiture” and “fine” were treated as synonyms as the time of adoption of the Eighth Amendment).

Although the forfeiture was required by statute, the Supreme Court held that requiring the defendant to pay the entire \$357,144 violated the Excessive Fines Clause.

Justice Thomas wrote for the Court that it was “irrelevant whether respondent’s currency is an instrumentality; the forfeiture is punitive, and the test for the excessiveness of a punitive forfeiture involves solely a proportionality determination.” *Id.* at 333–34.

“In applying this standard, the district courts in the first instance, and the courts of appeals, reviewing the proportionality determination *de novo*, must compare the amount of the forfeiture to the gravity of the defendant’s offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant’s offense, it is unconstitutional.” *Id.* at 336–37.

Thus, under *Bajakajian* a forfeiture or fine may be dispropor-

tionate and excessive even though the defendant violated the statute authorizing it. A court may not merely mechanically apply the statute —the constitution requires an individualized determination in each case.

**There must be individualized determination of the defendant's ability to pay.**

Ability to pay was not at issue in *Bajakajian*. Further, Bajakajian never raised the issue of ability to pay.).

The Court noted, however, that the Excessive Fines Clause arose from the common law requirement that a fine or forfeiture “should not deprive a wrongdoer of his livelihood.” *Id.* at 335.

Moreover, the Supreme Court subsequently determined that the Excessive Fines Clause incorporates the common law rule that economic sanctions must both “be proportioned to the wrong” and “not be so large as to deprive [an offender] of his livelihood” in *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (quoting *Browning-Ferris v. Kelco*, 492 U.S. 257, 271 (1989)) (emphasis added).

Hence, a large number of courts have determined that under, *Timbs* and *Browning-Ferris* and the common law background of the Excessive Fines Clause, the court must consider the defendant's

ability to pay. *See City of Seattle v. Long*, 493 P.3d 94, 112 (Wash. 2021) (“A number of modern state and federal courts have joined the chorus of legal scholars to conclude that the history of the clause and the reasoning of the Supreme Court strongly suggest that considering ability to pay is constitutionally required.”).

Furthermore, the determination must involve a realistic assessment of the individual defendant’s ability to pay — simply to say the defendant might win the lottery or suddenly fall heir to an unexpected fortune would completely eliminate the need for an individualized determination since such an unlikely event could occur to anyone. In *Gordon v. State*, 139 So. 3d 958 (Fla. 2d DCA 2014), — which was decided before the 2019 decision in *Timbs* — the court considered fines. Gordon was a significant drug dealer, trafficking in an amount “four-to-twelve times as much as the majority of traffickers of oxycodone and hydrocodone.” *Id.* at 961. Although Gordon argued on appeal that the fine provisions were facially unconstitutional, *id.* at 960, the Second District did not directly address that issue and instead concluded that the fines imposed on Gordon were not constitutionally excessive under the circumstances of her individual case. *Id.* at 964. Notably, the Second District

did not address the question of the defendant's ability to pay in *Gordon*.<sup>1</sup> But ability to pay must be considered under *Timbs*, *Browning-Ferris*, and the extensive history and case law set out in *City of Seattle v. Long*, 493 P.3d 94, 111–13 (Wash. 2021) (detailing common law leading up to adoption of Excessive Fines Clause).

**The fines and surcharges should be stricken because they were imposed under an unconstitutional statute.**

In view of the foregoing, the fine provisions of section 893.135(f)(1) are unconstitutional on their face and as applied to the indigent Appellant in this case. As a result, there is no constitutional statutory basis for imposition of the fines in this case and they must be stricken.

Where, as here, a statute is unconstitutional, a court does not have the power to modify the statute to make it constitutional. “The judiciary ... is without power to rewrite a plainly written statute,

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<sup>1</sup> In *Stephenson v. State*, 368 So. 3d 5 (Fla. 4th DCA 2023), this Court followed *Gordon* in upholding the assessment of fines under section 893.135. *Stephenson* dispenses with the issue in a few sentences, and the opinion contains no individualized determination of the constitutionally required factors discussed in *Gordon*, contains no discussion of the defendant's ability to pay under *Timbs* and *Long*, and does not address the constitutionality of the statute itself. Hence, it offers no guide to the issues raised in this motion.

even if it is to avoid an unconstitutional result.” *Westphal v. City of St. Petersburg*, 194 So. 3d 311, 313–14 (Fla. 2016) (emphasis added). The courts must remain faithful to the rule that the Legislature alone has the power to enact and amend the Criminal Code. Art. II, § 3, Fla. Const. Hence, the fines and surcharges in this case should be stricken.

**The fines and surcharges are unconstitutional as they are in excess of the defendant’s ability to pay.**

Ability to pay must be considered under *Timbs*.

In the present case, Appellant is indigent. The fine of \$500,000 — plus surcharge — will destroy any economic future he has. It amounts to a lifetime of indebtedness with such a fine.

Under *Timbs*, a fine may not be so great as to destroy the defendant’s economic future, and the ability to pay must be taken into consideration.

The \$500,000 fine is intended to take the profits of drug activity away from the individuals who profit from the activity — not from an indigent defendant. The record shows no present ability to pay and no future ability to pay. Appellant is without economic prospects.

The fine and surcharge should be stricken.

## POINT VII

APPELLANT'S CONVICTION AND SENTENCE SHOULD BE REVERSED BECAUSE HE WAS CONVICTED BY A SIX-PERSON JURY IN VIOLATION OF THE DUE PROCESS AND JURY CLAUSES OF THE FEDERAL CONSTITUTION.

Florida allows trial by a jury of six in non-capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat. Accordingly, this case involved a trial by a jury of six rather than twelve members. Appellant contends that the federal constitution requires a jury of twelve, so that fundamental error occurred because he was deprived of this right. He acknowledges contrary authority, as discussed below.

*Williams v. Florida*, 399 U.S. 78 (1970), held that state court juries as small as six were constitutionally permissible, despite the determination in *Thompson v. Utah*, 170 U.S. 343, 349-50 (1898), that the jury guaranteed by the Sixth Amendment consists “of twelve persons, neither more nor less.”

*Thompson* held that the Sixth Amendment enshrined the right to a jury of twelve as provided at common law. *Id.* at 349-50. In addition to the authorities cited there, one may note that Blackstone stated that the right to a jury of twelve is even older, and more firm-

ly established than the unqualified right to counsel in criminal cases. 4 William Blackstone, *Commentaries on the Laws of England*, ch. 27 (“Of Trial and Conviction”).<sup>2</sup> Blackstone traced the right back to ancient feudal right to “a tribunal composed of twelve good men and true,” and wrote that “it is the most transcendent privilege which any subject can be enjoy or wish for, that he cannot be affected in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals.” 3 Blackstone, ch. 23 (“Of the Trial by Jury”).<sup>3</sup>

Thus, at the time of the amendment’s adoption, the essential elements of a jury included “twelve men, neither more nor less.” *Patton v. United States*, 281 U.S. 276, 288 (1930).

*Williams* itself has now come into question in light of *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which concluded that the Sixth Amendment’s jury requirement encompasses what the term “meant at the Sixth Amendment’s adoption.” *Id.* at 1395. (Of course, the requirement that the jury be composed of men has been overturned

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<sup>2</sup> Found at <https://lonang.com/wp-content/download/Blackstone-CommentariesBk4.pdf>

<sup>3</sup> Found at <https://lonang.com/wp-content/download/Blackstone-CommentariesBk3.pdf>

by a subsequent amendment – the Equal Protection Clause of the Fourteenth Amendment.. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994).

In this case, Appellant did not receive a trial by a jury as the term was meant at the Sixth Amendment’s adoption, or at the time of the Fourteenth Amendment for that matter, as he was not tried by a jury of twelve. It is acknowledged that this Court has rejected this argument. *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022).

The error is fundamental and structural, as the conviction arose from a sheer denial of this fundamental right. 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.”). Such was

not the case here. A new trial should be ordered before a jury of twelve.

### CONCLUSION

For the foregoing reasons in Points I-V, and VII, this Court should reverse Appellant's conviction and sentence and remand this cause for a new trial.

For the reasons in Point VI, this Court should remand to strike the fine and surcharge.

Respectfully submitted,

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