

No.

IN THE SUPREME COURT OF THE UNITED STATES

DARNELL LEE RICHARDSON, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Daniel Wehking, Esq.
Special Assistant Public Defender
Counsel of Record
Office of the Public Defender
255 N Broadway Avenue
Bartow, FL 33830
(321) 765-3115
attorneywehking@gmail.com

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2024-2451
Lower Tribunal No. 2022-CF-006789

DARNELL L. RICHARDSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Polk County.
Lori A. Winstead, Judge.

May 26, 2026

PER CURIAM.

AFFIRMED.

STARGEL, WHITE and KAMOUTSAS, JJ., concur.

Blair Allen, Public Defender, and Daniel Wehking, Special Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Wendy Buffington, Senior Assistant Attorney General, Tampa, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

Darnell Richardson,
Appellant

Case No.: 6D24-2451

vs

State of Florida,
Appellee.

**MOTION FOR REHEARING, MOTION TO CERTIFY A QUESTION
OF GREAT PUBLIC IMPORTANCE, AND MOTION FOR WRITTEN
OPINION**

Appellant Darnell Richardson, through counsel, moves for rehearing, to certify a question of great public importance, and motion for written opinion under Florida Rule of Appellate Procedure 9.330. He does so for the following reasons:

1. This Court affirmed appellant's conviction and his sentence on May 26, 2026. The Court's per curiam affirmed opinion denies his argument made in Point I that he was illegally sentenced as a prison releasee reoffender without a jury making the requisite findings. The opinion denies his argument made in Point I that the prison releasee offender statute's requirement that a prosecutor show only a preponderance of the evidence rather than evidence beyond a reasonable doubt to increase the minimum sentence is

unconstitutional. The opinion denies his argument made in Point II that sentencing a defendant to mandatory life without parole because of something they did as a child is unconstitutional.

2. Appellant intends to seek further review of these issues. The State has argued to the United States Supreme Court that the petitioners' failure to move to certify a question of great public importance on that issue meant that they did not pursue every available avenue of review in the Florida courts and therefore the United States Supreme Court has no jurisdiction. *See Jackson v. Florida*, No. 23-5570; *Crane v. Florida*, No. 23-5455; *Morton v. Florida*, No. 23-5579; *Sposato v. Florida*, No. 23-5575; *Arrellano-Ramirez v. Florida*, No. 23-5567; and *Enriquez v. State*, 23-5965. Accordingly, appellant moves for rehearing and to certify a question of great public importance. Specifically, appellant moves for three questions to be certified as questions of great public importance.

3. Whether the Sixth Amendment requires a jury finding for prison releasee reoffender sentences is question of great public importance considering the statute requires more than determination of the existence of a prior conviction and *Erlinger v.*

United States, 602 U.S. 821 (2024) holds anything more than the existence of a prior conviction requires a jury finding. No Florida appellate court has addressed the validity of the prison releasee reoffender statute since *Erlinger* was decided. The issue is expected to recur in future cases. A written opinion regarding constitutionality of a Florida statute provides a legitimate basis for Florida Supreme Court review. Lower courts are in need of clarity on the issue. Appellant requests the following question be certified as one of great public importance:

DOES THE SIXTH AMENDMENT REQUIRE A JURY FINDING WHERE THE STATUTE REQUIRES FINDINGS THAT A DEFENDANT WAS CONVICTED, SENTENCED, AND RELEASED AFTER A CERTAIN DATE TO IMPOSE A MINIMUM MANDATORY SENTENCE?

4. Whether the Sixth Amendment requires a finding of facts beyond a reasonable doubt for prison releasee reoffender sentences is question of great public importance considering the U.S.

Supreme Court in *Erlinger v. United States*, 602 U.S. 821 (2024) holds that facts used to impose a minimum mandatory sentence must be found beyond a reasonable doubt. No Florida appellate

court in Florida has addressed the validity of the prison releasee reoffender statute since *Erlinger* was decided. The issue is expected to recur in future cases. A written opinion regarding constitutionality of a Florida statute provides a legitimate basis for Florida Supreme Court review. Lower courts are in need of clarity on the issue. Appellant requests the following question be certified as one of great public importance:

DOES THE SIXTH AMENDMENT REQUIRE PROOF BEYOND A REASONABLE DOUBT FOR ANY ELEMENT REQUIRED TO IMPOSE A MINIMUM MANDATORY SENTENCE?

5. Whether the Eighth Amendment prohibits mandatory life sentences for defendants based upon actions taken before they were 18 years old is a question of great public importance considering mandatory life sentences without the possibility of parole are explicitly prohibited for juveniles under *Graham v. Florida*, 130 S.Ct. 2011 (2010). The issue is expected to recur in future cases. A written opinion regarding constitutionality of a Florida statute provides a legitimate basis for Florida Supreme Court review. Appellant requests the following question be certified as one of great public importance:

DOES IMPOSITION OF A MANDATORY LIFE SENTENCE
WITHOUT THE POSSIBILITY OF PAROLE BASED UPON A
DEFENDANT'S CHILDHOOD BEHAVIOR CONSTITUTE CRUEL AND
UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT?

WHEREFORE, Appellant respectfully moves this Court for
rehearing, to certify a question of great public importance, and for a
written opinion.

Respectfully submitted,

/s/ Daniel Wehking

DANIEL WEHKING, Esq.

Special Assistant Public Defender

FL Bar Number: 27224

Office of the Public Defender

255 N Broadway Avenue

Bartow, FL 33830

CERTIFICATE OF SERVICE AND AUTHORITIES

I HEREBY CERTIFY the legal authorities identified exist and
are accurately cited and that the foregoing has been furnished
electronically through the Florida Court's Eportal to the Office of
the Attorney General at crimappdab@myfloridalegal.com on this 3rd
day of June, 2026.

/s/ Daniel Wehking

DANIEL WEHKING, Esq.

Special Assistant Public Defender

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT**

June 29, 2026

DARNELL L. RICHARDSON,
APPELLANT(S),

CASE NO.: 6D2024-2451
L.T. NO.: 2022-CF-006789

V.

STATE OF FLORIDA,
APPELLEE(S).

BY ORDER OF THE COURT:

Appellant's motion for rehearing, motion to certify a question of great public importance, and motion for written opinion docketed June 4, 2026, is denied.

I hereby certify that the foregoing is a true copy of the original court order.

6D2024-2451 June 29, 2026



Stacey Pectol
Clerk



PANEL: STARGEL, WHITE and KAMOUTSAS, JJ.

cc:

CRIM APP TAMPA ATTORNEY
GENERAL
WENDY ELAINE BUFFINGTON
POLK CLERK

10TH CIRCUIT PUBLIC DEFENDER
PD 10 S.A.P.D.
ANALISE VICTORIA WALKER
DANIEL WEHKING

☐ RE-SENTENCING

☐ COMM CONTROL/PROBATION VIOLATOR

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA

DIVISION: F7
CASE NUMBER: 2022CF-006789-A000-XX
DC#: H39685
OBTS#: 5308013889

STATE OF FLORIDA
VS.
DARNELL LEE RICHARDSON

JUDGMENT

THE DEFENDANT DARNELL LEE RICHARDSON , BEING PERSONALLY BEFORE THIS COURT
REPRESENTED BY WILLIAM J BROWN J, HIS ATTORNEY OF RECORD, AND THE STATE
REPRESENTED BY RACHELLE WILLIAMSON, ASSISTANT STATE ATTORNEY, AND HAVING

BEEN FOUND GUILTY BY JURY TO THE FOLLOWING CRIME(S):

<u>COUNT</u>		<u>STATUTE</u>	<u>DEGREE</u>
1	ATTEMPT FIRST DEGREE MURDER	782.04.	FL
2	BURG-ASSAULT OR BATTERY DUR	810.02.	FP
3	BATTERY TOUCH OR STRIKE	784.03.	M1

PAGE 1 OF 10

☒ AND NO CAUSE BEING SHOWN WHY THE DEFENDANT SHOULD NOT BE ADJUDICATED GUILTY, IT IS ORDERED THAT THE DEFENDANT IS HEREBY ADJUDICATED GUILTY OF THE ABOVE CRIME(S).

☒ AND PURSUANT TO SECTION 943.325, FLORIDA STATUTES, HAVING BEEN CONVICTED OF ATTEMPTS OR OFFENSES AS SPECIFIED THEREBY, THE DEFENDANT SHALL BE REQUIRED TO SUBMIT BLOOD OR OTHER BIOLOGICAL SPECIMEN FOR DNA ANALYSIS.

☐ DOC-COMMUNITY CONTROL (FOR ADULT OFFENDERS ONLY)-SECTION 827.071, FLORIDA STATUTES-SEXUAL PERFORMANCE BY A CHILD, 847.0145-SELLING OR BUYING OF MINORS

☐ AND GOOD CAUSE BEING SHOWN; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD. (TO BE CHECKED ONLY IF DEFENDANT IS FINGERPRINTED)

PAGE 2 OF 10

DARNELL LEE RICHARDSON

2022CF-006789-A000-XX

5308013889

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY HIS ATTORNEY, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY HE SHOULD NOT BE SENTENCED AS PROVIDED BY LAW, AND NO CAUSE BEING SHOWN, (CHECK ONE IF APPLICABLE)

SENTENCE (AS TO COUNT 1)

- ☐ AND THE COURT HAVING ON DEFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE
- ☐ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON NOW RE-SENTENCES THE DEFENDANT
- ☐ AND THE COURT HAVING PLACED THE DEFENDANT ON PROBATION/COMMUNITY CONTROL AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S PROBATION/COMMUNITY CONTROL

IT IS THE SENTENCE OF THE COURT THAT:

- ☐ THE DEFENDANT PAY A FINE OF \$ PURSUANT TO F.S. 775.083, FLORIDA STATUTES, PLUS \$ AS THE 5% SURCHARGE REQUIRED BY SECTION 938.04, FLORIDA STATUTES (SEE COST ORDER)
- ☒ THE DEFENDANT IS HEREBY COMMITTED TO THE DEPARTMENT OF CORRECTIONS
- ☐ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF POLK COUNTY, FLORIDA
- ☐ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04 FLORIDA STATUTES

TO BE IMPRISONED (CHECK ONE: UNMARKED SECTIONS ARE INAPPLICABLE):

- ☒ FOR A TERM OF NATURAL LIFE
- ☐ FOR A TERM OF YEAR(S), MONTH(S), DAY(S)
- ☐ SAID SENTENCE SUSPENDED FOR A PERIOD OF 0 YEARS, 0 MONTHS, 0 DAYS SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH:

- ☐ FOLLOWED BY A PERIOD OF 0 YEAR(S), 0 MONTH(S), 0 DAY(S) ON COMMUNITY CONTROL; FOLLOWED BY A PERIOD OF 0 YEAR(S), 0 MONTH(S), 0 DAY(S) ON PROBATION UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN
- ☐ HOWEVER, AFTER SERVING A PERIOD OF IMPRISONMENT IN , THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND DEFENDANT SHALL BE PLACED ON PROBATION/COMMUNITY CONTROL FOR A PERIOD OF UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF PROBATION/COMMUNITY CONTROL SET FORTH IN A SEPARATE ORDER ENTERED HEREIN

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

IT IS FURTHER ORDERED THAT THE SENTENCE IMPOSED FOR THIS COUNT SHALL RUN:

- ☐ CONSECUTIVE TO: ☐ CONCURRENT WITH: ☐ COTERMINOUS\CONCURRENT WITH:

THE SENTENCE SET FORTH IN COUNT

PAGE 3 OF 10

DARNELL LEE RICHARDSON

2022CF-006789-A000-XX

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THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY HIS ATTORNEY, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY HE SHOULD NOT BE SENTENCED AS PROVIDED BY LAW, AND NO CAUSE BEING SHOWN, (CHECK ONE IF APPLICABLE)

SENTENCE (AS TO COUNT 2)

- ☐ AND THE COURT HAVING ON DEFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE
- ☐ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON NOW RE-SENTENCES THE DEFENDANT
- ☐ AND THE COURT HAVING PLACED THE DEFENDANT ON PROBATION/COMMUNITY CONTROL AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S PROBATION/COMMUNITY CONTROL

IT IS THE SENTENCE OF THE COURT THAT:

- ☐ THE DEFENDANT PAY A FINE OF \$ PURSUANT TO F.S. 775.083, FLORIDA STATUTES, PLUS \$ AS THE 5% SURCHARGE REQUIRED BY SECTION 938.04, FLORIDA STATUTES (SEE COST ORDER)
- ☒ THE DEFENDANT IS HEREBY COMMITTED TO THE DEPARTMENT OF CORRECTIONS
- ☐ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF POLK COUNTY, FLORIDA
- ☐ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04 FLORIDA STATUTES

TO BE IMPRISONED (CHECK ONE: UNMARKED SECTIONS ARE INAPPLICABLE):

- ☒ FOR A TERM OF NATURAL LIFE
- ☐ FOR A TERM OF YEAR(S), MONTH(S), DAY(S)
- ☐ SAID SENTENCE SUSPENDED FOR A PERIOD OF 0 YEARS, 0 MONTHS, 0 DAYS SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH:

- ☐ FOLLOWED BY A PERIOD OF 0 YEAR(S), 0 MONTH(S), 0 DAY(S) ON COMMUNITY CONTROL; FOLLOWED BY A PERIOD OF 0 YEAR(S), 0 MONTH(S), 0 DAY(S) ON PROBATION UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN
- ☐ HOWEVER, AFTER SERVING A PERIOD OF IMPRISONMENT IN , THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND DEFENDANT SHALL BE PLACED ON PROBATION/COMMUNITY CONTROL FOR A PERIOD OF UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF PROBATION/COMMUNITY CONTROL SET FORTH IN A SEPARATE ORDER ENTERED HEREIN

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

IT IS FURTHER ORDERED THAT THE SENTENCE IMPOSED FOR THIS COUNT SHALL RUN:

- ☐ CONSECUTIVE TO: ☒ CONCURRENT WITH: ☐ COTERMINOUS/CONCURRENT WITH:

THE SENTENCE SET FORTH IN COUNT 1 OF THIS CASE 2022CF006789A000XX

DARNELL LEE RICHARDSON

2022CF-006789-A000-XX

5308013889

SPECIAL PROVISIONS (AS TO COUNT)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:
MANDATORY/MINIMUM PROVISIONS:

FIREARM

☐

IT IS FURTHER ORDERED THAT THE 3-YEAR MANDATORY MINIMUM IMPRISONMENT PROVISION OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

FIREARM (10/20/LIFE)

☐

IT IS FURTHER ORDERED THAT THE 0 YEARS 0 MONTHS 0 DAYS MANDATORY MINIMUM IMPRISONMENT PROVISION OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

DRUG TRAFFICKING AS TO COUNT ()

☐

IT IS FURTHER ORDERED THAT THE 30 YEAR MANDATORY MINIMUM IMPRISONMENT PROVISION OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

CONTROLLED SUBSTANCE WITHIN 1000 FEET OF SCHOOL

☐

IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISION OF SECTION 893.13(1)(c)1, FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

HABITUAL FELONY OFFENDER

☐

THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(a), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.

HABITUAL VIOLENT FELONY OFFENDER

☐

THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(b), FLORIDA STATUTES. A MINIMUM TERM OF YEARS(S) MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.

PRISON RELEASEE REOFFENDER (a.k.a. 1st)

☒

THE DEFENDANT IS ADJUDICATED AS A PRISON RELEASEE REOFFENDER AND HAS BEEN SENTENCED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082, FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.

LAW ENFORCEMENT PROTECTION ACT

☐

IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF YEARS MONTHS DAYS BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES (OFFENSES COMMITTED BEFORE JANUARY 1, 1994).

CAPITAL OFFENSE

☐

IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES (OFFENSES COMMITTED BEFORE OCTOBER 1, 1995).

SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN

☐

IT IS FURTHER ORDERED THAT THE FIVE YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT (OFFENSES COMMITTED BEFORE JANUARY 1, 1994).

PAGE 8 OF 10

Defendant's Name: Richardson, Darnell Lee

Case Number: 22CF6789

☐ POLK COUNTY JAIL (NO PROBATION) ☒ FLORIDA STATE PRISON

In the event the above sentence is to the Department of Corrections, the Sheriff of Polk County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections, at the facility designated by the Department, together with a copy of this judgment and sentence and any other documents specified by Florida Statutes.

The defendant in open Court was advised of his/her right to appeal this sentence by filing a notice of appeal within thirty (30) days from this date, with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal, at the expense of the State, upon showing of indigence.

In imposing the above sentence, the Court further recommends/orders:

☒ All mandatory costs imposed ☐ Due within _____
☒ Liened ☐ Referred to Collections

Def. sent. as PRR in ch. 1 + 2
Def. sent. to LIFE Act 21 + 2

DONE AND ORDERED IN OPEN COURT, AT BARTOW, POLK COUNTY, FLORIDA.

4.24.23.
DATE

[Signature]
Lori Winstead, Circuit Judge
Facsimile Signature as authorized
By Florida Statute Section 116.34

Page 10 of 10 Pages

Revised 09/5/2017

I certify that a copy of this order has been furnished to the State Attorney and the Defense Attorney. this 15th day of May 23.
Stacy M. Butterfield, Clerk of Courts
By [Signature]
Deputy Clerk

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT, IN AND FOR
POLK COUNTY, FLORIDA

CASE NO: 2022-CF-006789-A

State of Florida

vs.

Darnell Richardson.

_____ /

MOTION TO CORRECT SENTENCING ERROR PENDING APPEAL

Defendant, Darnell Richardson, through counsel, moves to correct a sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), on the following grounds:

- 1) On April 24, 2023, Mr. Richardson was before this honorable Court for sentencing on one count attempted first degree murder, one count of burglary with an assault or battery, and one count of misdemeanor battery. None of these offenses carry minimum mandatory time beyond what is required by the score sheet. The score sheet showed a minimum sentence of 149.85 months as calculated. The Court sentenced Mr. Richardson to life in prison on both felony counts and to 282 days in jail on the misdemeanor count.
- 2) A jury must determine any fact used to increase the maximum sentence of a crime. The holding of the U.S. Supreme Court in

Erlinger v. United States, 602 U.S. 1840 (2024), established that previous jurisprudence permitting judicial determination of prison releasee reoffender status under the exception for prior record determination is not permitted.

- 3) In its answer brief to the Florida Supreme Court in the pending case of *Maye v. State*, SC23-1184, the State concedes this is the state of the law. The State tells the Florida Supreme Court, “Petitioner asks the Court to decide whether *Alleyne* requires that before a defendant may receive a mandatory sentence under the Prison Releasee Reoffender Act, the jury, not a judge, must find that the defendant committed his current offense within three years of his prior release from prison. Init. Br. 6–22. After the Supreme Court’s decision in *Erlinger v. United States*, 144 S. Ct. 1840 (2024), the answer to that constitutional question is yes.” (*Maye* Answer Brief page 9, see attached.)
- 4) In *Erlinger*, the defendant objected to being sentenced with an enhancement under the federal Armed Career Criminal Act (ACCA). The ACCA required more than the simple determination that a defendant has a prior record. It requires a finding that the prior offenses were committed on separate occasions. The Court held that case law “permitted a judge to undertake the job of finding the fact of a prior conviction—and that job alone.” *Id.* at 1853. Despite the suggestion that differentiating whether or not two prior offenses were committed on separate occasions was as discernable from the

record as whether or not the defendant was previously convicted at all, the Supreme Court disagreed and held that a jury must make that factual determination.

- 5) The Prison Releasee Reoffender statute has a requirement similar to the federal ACCA statute. To find a defendant has qualified for sentencing as a prison releasee reoffender, not only must the defendant have previously been found guilty a felony, he must have been sentenced to prison and released from prison within 3 years of the date of offense in the current case. Just like ACCA, the Florida PRR statute requires a finding of when, not just what, things occurred in terms of a prior conviction.
- 6) Florida courts have been under the impression that the “narrow exception” that allows a judge to find “the fact of a prior conviction” also “permits a judge to find perhaps any fact related to a defendant's past offenses, including whether he committed them on different occasions.” *Id.* at 1853-1854. The majority in *Erlinger* explicitly rejects that understanding. They held “a judge may ‘do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.’” *Id.* at 1854.
- 7) Further, the PRR statute only requires that the elements for the statute be found by a judge by a preponderance of the evidence. *Florida Statute 775.082(9)(a)(3)*. This fails the Constitutional requirement for increasing a maximum sentence. The Court in *Erlinger* held “the government must

prove beyond a reasonable doubt to a unanimous jury the facts necessary to sustain the punishment it seeks” when it came to determining the requisite facts for the enhancement.

- 8) As *Florida Statute 775.082* is Constitutionally invalid, it cannot be enforced. It should not be enforced in Mr. Richardson’s case and should not be enforced in its current form in any future instances. Further, no new jury may be empaneled for Mr. Richardson. This is both because the statute is unconstitutional and because it would be a violation of double jeopardy. Elements of a crime, including elements that increase maximum or minimum sentences, must be determined by the jury when the jury is deciding a verdict. No such jury finding was made here and the State is not permitted to twice put a defendant in jeopardy to make findings that increase the minimum sentence.
- 9) Mr. Richardson argues his score sheet was incorrect and must be scored no higher than 179.8 total sentence points. Injury points on a score sheet increase the minimum sentence. As such, the extent of injury and whether there was an injury, must be determined by a jury. “In *Apprendi*, the United States Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Brown v. State*, 260 So. 3d 147 @ 150 (Fla. 2018) quoting *Apprendi v. New Jersey*, 530 US 466 @ 490 (2000). “Where the addition of

WHEREFORE, Mr. Richardson respectfully requests this Court grant this motion and correct his sentence to remove the prison releasee designation, to correct his score sheet to no more than 179.8 total sentence points, to lower the cost to Haines City Police Department to \$271.40, to remove the \$22 of fees to the clerk's office, and set the payment to the State Attorney's Office at no more than \$100.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished electronically through the Florida Court's Eportal to the Office of the Attorney General at crimappdab@myfloridalegal.com, State Attorney's Office at felonypolk@sao10.com, Office of Criminal Conflict and Civil Regional Counsel at polkdocs@flrc2.org the Honorable Lori Winstead at mfreeman@jud10.flcourts.org on this 9th day of February, 2025.

/s/ Daniel Wehking

DANIEL WEHKING, B.C.S., Special Assistant Public Defender

FL Bar Number: 27224

Office of the Public Defender

255 N Broadway Avenue

Bartow, FL 33830

(321) 765-3115

attorneywehking@gmail.com

Filing # 218784505 E-Filed 03/14/2025 08:50:12 AM

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: 53-2022-CF-006789-A000-XX
APPEAL NO.: 6D2024-2451

DARNELL LEE RICHARDSON,

Defendant.

_____ /

ORDER ON DEFENDANT’S MOTION TO CORRECT SENTENCING ERROR
PENDING APPEAL

THIS MATTER is before the Court upon Defendant’s *Motion To Correct Sentencing Error Pending Appeal* (“motion”), filed through counsel on February 9, 2025, pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). On February 12, 2025, the State filed an amended response to Defendant’s motion (“amended response”). After reviewing the motion, the amended response, the court file, the record, and the applicable law, the Court finds as follows:

In case 2022-CF-006789, on March 1, 2023, a jury found Defendant guilty of attempted first degree murder with a weapon (count one), burglary of a structure or conveyance with an assault or battery while armed with a weapon (count two) and battery (count three). *See* verdict form, attached. On April 24, 2023, the Court sentenced Defendant as a prison releasee reoffender to two concurrent terms of life in prison (counts one and two) and time-served on count three. *See* judgement and sentence, attached.

In his motion, Defendant raises seven claims of error. In claim one, Defendant asserts that pursuant to *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024), his prison releasee reoffender sentence is illegal because the factual determinations to support such a designation were made by the trial judge rather than a jury.

In its amended response, the State points out that *Erlinger*, a progeny case of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), held that its decision was limited to application of federal recidivist statute the Armed Career Criminal Act’s (“ACCA”) occasions inquiry. The State also contends that in *Simmons v. State*, 332 So. 3d 1129, 1131 (Fla.

5th DCA 2022), the court held that *Apprendi* is inapplicable to the determination of a defendant's release from prison and maintains the Court is precedentially bound by *Simmons*, arguing that, to date, the Florida Supreme Court has not applied *Erlinger* to Florida law and the United States Supreme Court has not applied *Erlinger* to any Florida case. The State further notes the federal statute at issue in *Erlinger* is dissimilar to the prison releasee reoffender statute in that sentencing judges in ACCA cases are permitted to use information gained from documents, including judicial records, plea agreements and colloquies between a judge and defendant to determine the fact of a prior conviction while *Simmons* places the date of release from prison within the fact of a prior conviction.¹

After reviewing the allegations, the State's arguments, citations and attachments to its response, adopted and incorporated herein, the court file, and the record, the Court finds the State's response persuasive. The Court also notes that the *Erlinger* court specifically did not overturn its decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998), where the United States Supreme Court had previously carved out an exception to what a sentencing judge can factually determine, which was a finding of the fact of a prior conviction. As such, no relief is warranted on the allegations in claim one.

In claim two, Defendant asserts 40 victim injury points were erroneously added to his scoresheet because they were not submitted to the jury. The State did not address this claim in its response. The Court finds Defendant's argument is without merit. A review of the record reveals that count one of the amended information alleged Defendant "did attempt to kill [the victim], by actually and intentionally striking, touching, or hitting [the victim], by stabbing [the victim] with a weapon, to-wit, a knife . . . and in doing so intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement to [the victim]. . . ." See amended information, attached. Count two alleged Defendant "in the course of committing the

¹ In its amended response, the State also alleges Defendant's claim is untimely, asserting he failed to object at sentencing on *Apprendi* grounds and therefore did not properly preserve the argument. The State correctly points out case law addressing both sides of the issue and apprises the Court in its response that the issue of whether a rule 3.800(b)(2) motion preserves an otherwise untimely *Apprendi* sentencing claim is currently pending at the Florida Supreme Court in *Maye v. State*, SC23-1184. Accordingly, the Court follows the line of cases finding such claims to be proper in a rule 3.800(b)(2) motion. See *Hollingsworth v. State*, 293 So. 3d 1049, 1051 (Fla. 4th DCA 2020); see also *Arrowood v. State*, 843 So. 2d 940, 941 (Fla. 1st DCA 2003); *Gisi v. State*, 848 So. 2d 1278 (Fla. 2d DCA 2003). The State also notes in its response that Defendant mentioned in his motion an ostensible concession by the Attorney General in briefing in *Maye* as to whether *Erlinger* applied to the prison releasee reoffender statute and asserts the Florida Supreme Court has not yet adopted that reasoning and disagrees with the concession.

burglary made an assault or battery upon [the victim]. . . .” *See id.* Defendant was convicted by jury as charged. *See* verdict form, previously attached.

Furthermore, statutorily the maximum sentence Defendant faced on counts one and two was life in prison. *See* amended information, previously attached. The lowest permissible sentence with the victim injury points was 143.85 months and the lowest permissible sentence without the victim injury points would have been 103.85 months. *See* scoresheet, attached. Thus, whether or not the victim injury points were included on Defendant’s scoresheet, the trial court sentenced him within the permitted range. As such, no relief is warranted upon the allegations in claim two.

In claim three, Defendant asserts it was error to include a \$5.00 cost for transporting Defendant in the \$276.40 awarded to Haines City Police Department (“HCPD”) for the cost of investigation, arguing transportation of an arrestee from the police department to the county jail happens after an investigation is complete. In its amended response, the State avers that it does not object to the relief requested as to costs. As such, the Court finds the cost should be stricken.

In claim four, Defendant challenges the imposition of \$100 for the cost of prosecution, arguing “[w]hen the State Attorney, as in this case, seeks additional costs above \$100, there should not be a generic \$100 fee imposed as there is no basis for F.S. 938.27 or any other law for a flat fee.” In its amended response, the State avers that it does not object to the relief requested as to costs.

A review of the record reveals \$100 was imposed for additional State Attorney prosecution costs. *See* monetary obligations order, attached. § 938.27(8), Fla. Stat. (2024) provides that the Court shall set prosecutorial costs at no less than \$100 per felony case. The statute indicates that the Court “may set a higher amount upon a showing of sufficient proof of higher costs incurred.” *Id.* Here, the Court imposed \$100 in additional prosecutorial costs, but no evidence was provided to justify such an imposition. As such, the \$100 must be stricken.

In claim five, Defendant asserts the following costs of trial claimed by the State are not permitted under § 938.27, Fla. Stat.: 1) \$113.72 for serving two trial subpoenas to the same person; 2) \$112.84 for serving two other trial subpoenas; 3) \$45.86 for rolling prints; and 4) \$40.68 to locate and serve Dr. Wall Ward. In its amended response, the State avers that it does

not object to the relief requested as to costs. As such, the Court finds the costs should be stricken.²

In claim six, Defendant asserts his PRR sentence is illegal, arguing that he was seventeen years of age at the time of the offense used to enhance his minimum mandatory sentence to life in prison and that a minor cannot be sentenced to prison for life. The State did not address this issue in its response. The Court finds Defendant's argument without merit. *See McDuffey v. State*, 286 So. 3d 364 (Fla. 1st DCA 2019). As such, no relief is warranted upon the allegations in claim six.

In claim seven, Defendant asserts it was error to assess a total of \$22 to the Clerk's Office under § 28.24, Fla. Stat., consisting of \$7 for a "preparation of judgement lien" fee; \$6 for a "recording judgment lien" fee; \$6 for a "recording of the certified copy" fee; \$2 for a "certification of judgment lien" fee; and \$1 for a "copy" fee. In its amended response, the State avers that it does not object to the relief requested as to costs. As such, the Court finds the costs should be stricken.

Based on the foregoing, it is therefore **ORDERED AND ADJUDGED** that:

1. Defendant's motion is **GRANTED in part** to the extent the Clerk of Courts is **INSTRUCTED** to amend the Monetary Obligations Order by:
 - a) indicating \$271.40 for "Investigation Costs to HCPD"
 - b) striking the \$100 for "Additional SAO Costs of Prosecution Fees"
 - c) striking \$45.86, \$40.86, \$116.68, \$112.84 and \$113.72 for investigation costs to the State Attorney's Office under the "Discretionary Costs/Fees" section
2. Defendant's motion is **GRANTED in part** to the extent the Clerk of Courts is **INSTRUCTED** to amend the Judgment Lien by:
 - a) amending the "Cost of Investigation/Arrest" payable to HCPD to \$271.40
 - b) striking the \$429.78 for investigation costs to the State Attorney's Office
 - c) striking the \$7, \$6, \$6, \$2 and \$1 assessed for preparing and recording the Judgment Lien
3. Defendant's motion is **DENIED** as to claims one, two and six.

ORDERED in Polk County, Florida on Friday, March 14, 2025.

² Though Defendant did not reference the \$116.68 cost imposed for investigation to locate and serve Dr. De Los Santos, the Court finds this cost is similarly not permitted by statute and must be stricken.

53-2022-CF-006789-A000-XX 03/14/2025 08:38:46 AM



Torea Spohr, Circuit Judge
53-2022-CF-006789-A000-XX 03/14/2025 08:38:46 AM

AVALON VICTORIA
vavalon@sao10.com
appeals.felonypolk@sao10.com
mlasater@sao10.com

Daniel Adam Wehking
attorneywehking@gmail.com

Lisa B Lott
llott@pd10.org
kstockman@pd10.org
appealfilings@pd10.org

TS/meo

PRESERVATION OF ERROR

It is fundamental error to sentence a defendant in violation of *Erlinger v. United States*, 602 U.S. 1840 (2024). In *Erlinger*, the Court recognized the case itself was a continuation of the holding of *Alleyne v. United States*, 570 U.S. 99 (2013). *Alleyne* errors require resentencing because they invade the fundamental principle that a defendant is entitled to a jury trial for each element he is charged with. “These principles represent not ‘procedural formalit[ies]’ but ‘fundamental reservation[s] of power’ to the American people. *Blakely v. Washington*, 542 U.S. 296, 306, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).” *Erlinger* at 1850. Further, Mr. Richardson objected to the imposition of the PRR sentence via Motion to Correct Illegal Sentence which was filed on February 9, 2025, (R 365-373) and the trial court denied via written order on March 14, 2025. (R 387-391.)

It is fundamental error to sentence a defendant in violation of *Miller v. Alabama*, 132 S.Ct. 2455 (2012). Florida courts have held since the decision in *Miller* was released that it applied retroactively to anyone serving a sentence that violated its rule. *Horsley v. State*,

160 So.3d 393 (Fla. 2015); *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016).

It is fundamental error to give a standard jury instruction that incorrectly defines a disputed element. *Reed v. State*, 837 So.2d 366 (Fla. 2002).

ARGUMENT

I. THE TRIAL COURT ILLEGALLY SENTENCED MR. RICHARDSON AS A PRISON RELEASEE REOFFENDER UNDER *ERLINGER V. U.S.*

On April 24, 2023, Mr. Richardson was sentenced by the trial court as a prison releasee reoffender to life in prison without parole. (R.310, 349-350.) As a result of being sentenced as a prison releasee reoffender the trial court was required to sentence him to the statutory maximum.

This direct appeal was pending when he filed his motion to correct sentencing error pending appeal on February 9, 2025. (R 365-373.) On March 14, 2025, the trial court entered its order on the motion without holding a hearing. (R 387-391.) The trial court granted the motion in regards to the issues of various financial

obligations that had been imposed. The trial court denied the motion in regards to Mr. Richardson’s argument that he had been improperly sentenced as a prison releasee reoffender pursuant to *Erlinger v. United States*, 602 U.S. 1840 (2024).

The U.S. Supreme Court’s decision in *Erlinger*, makes it clear that the enhancement in this case was unconstitutional. In *Erlinger*, the defendant objected to being sentenced with an enhancement under the federal Armed Career Criminal Act (ACCA). The ACCA, like Florida’s PRR statute, required more than the simple determination that a defendant has a prior record. The ACCA requires a finding that the prior offenses were committed on separate occasions. The Court held that case law “permitted a judge to undertake the job of finding the fact of a prior conviction—and that job alone.” *Id.* at 1853. Despite the argument made during *Erlinger* that differentiating whether or not two prior offenses were committed on separate occasions was as discernable from the record as whether or not the defendant was previously convicted at all, the Supreme Court disagreed and held that a jury must make that factual determination.

The Florida Prison Releasee Reoffender statute has a requirement similar to the federal ACCA statute. To find a defendant has qualified for sentencing as a prison releasee offender, not only must the defendant have previously been found guilty of a felony, the defendant must have “within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor, a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence, or a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.” *Florida Statute 775.084(9)(a)(1)*. Just like ACCA, the Florida HFO statute requires a finding of when an event, not just what, occurred in terms of a prior conviction.

Erlinger also made it clear that in addition to a jury making a finding for an enhancement under the PRR statute, such a finding also must be made beyond a reasonable doubt. Florida only requires a preponderance of evidence for the enhancement to apply. *F.S. 775.084(9)(a)(3)*. This standard is unconstitutional.

Remedy

The case must be remanded for sentencing so that the trial court can make a determination as to the appropriate sentence without that requirement that the maximum sentence be imposed. The unconstitutional statute does not have the option of reverting to a previous statute. Since the statute went into effect in 1983, both the preponderance standard and the lack of a jury have been part of the statute. There is no Constitutional standard to revert to. Instead, statutory revival should be implemented to the last Constitutional version of the Florida Statutes. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016). The last Constitutional version of Chapter 775 did not include 775.084. To avoid unconstitutional sentencing the Court must permit a sentencing hearing to go forward without using the unconstitutional enhancements of 775.084.

II. THE TRIAL COURT ILLEGALLY SENTENCED MR. RICHARDSON AS A PRISON RELEASEE REOFFENDER UNDER *MILLER V. ALABAMA.*

1 community supervision with his prior -- uh --
2 convictions. He went to prison, was then put on
3 probation, he violated probation within three
4 months from being released from prison, they -- uh
5 -- Court modified his probation, sentenced him to
6 some jail time and modified his probation after
7 that and he again violated probation and was
8 sentenced to 10 years prison. So, at this time the
9 State is asking for a life sentence on Count's One
10 and Two, time served on Count Three, \$100.00 cost
11 of prosecution, the \$276.40 to Haines City Police
12 Department and \$429.78 in investigative costs to
13 the State Attorney's office, which is the four
14 affidavits total together.

15 THE COURT: I'm sorry. What was the total?

16 MS. WILLIAMSON: \$429.78.

17 THE DEFENDANT: Ms. Winstead? I went back to
18 prison the same time for agreed case. I did that
19 myself. (INDISCERN) is actually what it's called,
20 gave back nine years' probation for five years of
21 agreed case. That was due to not a charge, if you
22 can see it somewhere in there Ma'am.

23 THE COURT: Okay. First, I have the
24 penitentiary packet, the fingerprints. I heard the
25 testimony. I find that the Defendant in this case

1 qualifies as a Prison Release Reoffender, the
2 State having met their burden. Second, I have read
3 the presentencing investigation, I listened to the
4 facts of this case. I am sentencing you --
5 adjudicating you guilty, sentencing you to life as
6 to Count One and Two, time served as to Count
7 Three. \$429.78 to the State Attorney's office,
8 \$276.40 to the Haines City Police Department,
9 \$100.00 cost of prosecution, \$100.00 for the
10 services of your attorney, \$50.00 application fee.
11 All fines and Court costs and there is a \$518.00
12 fine and Court costs. All financials will be sent
13 to judgement lien. You have 30 days to appeal. If
14 you can't afford an attorney, one will be
15 appointed for you. I see that you already filed a
16 notice of appeal.

17 THE DEFENDANT: Yes, Ma'am.

18 THE COURT: That's fine.

19 THE DEFENDANT: That's where my family --
20 that's the last thing I want to say today is how
21 do we do that?

22 THE COURT: I cannot help you with that, but
23 you can talk to your attorney. They will need to
24 take your fingerprints. You have 30 days to
25 appeal. If you can not afford an attorney one will