No.

IN THE SUPREME COURT OF THE UNITED STATES

BOBBY RAY YON, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Blair Allen
Public Defender

Ronald N. Toward
Assistant Public Defender
Counsel of Record

Office of the Public Defender Tenth Judicial Circuit of Florida

P.O. Box 9000-PD
Bartow, FL 33831
(863) 534–4200
rtoward@pd10.org
dholloway@pd10.org
appealfilings@pd10.org

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Appendix A
Decision of the Lower Court

2026 WL 2588751
Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District **Court** of **Appeal** of Florida, **Second District**.

Bobby Ray YON, Jr., Appellant,
v.
STATE of Florida, Appellee.

No. 2D2025-3131
|
September 2, 2026

Appeal from the Circuit Court for Manatee County; Frederick P. Mercurio, Judge.

Attorneys and Law Firms

Blair Allen, Public Defender, and Kimberly Nolan Hopkins, Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Christopher Manon, Assistant Attorney General, Tampa, for Appellee.

Opinion

PER CURIAM.

***1** Affirmed.

BLACK, ATKINSON, and SMITH, JJ., Concur.

All Citations

--- So.3d ----, 2026 WL 2588751 (Mem)

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Appendix B
Excerpts from Initial Brief

STATEMENT OF THE CASE

The State Attorney for the Twelfth Judicial Circuit, Manatee County, charged Appellant, Bobby Ray Yon, Jr., by Information, with one count of aggravated assault on a person 65 years of age or older, a second degree felony, contrary to Sections 784.08(2)(b), 784.011, and 784.021, Fla. Stat.; and one count of criminal mischief ($1,000 or more), a second degree felony, contrary to Sections 806.13(1)(a) and (1)(b)3, Fla. Stat. (R 12-13). The victim, Appellant's mother, will be referred to as A.I.Y. and her other adult son will be referred to as M.Y.

The State filed a Notice of Intention to Seek Enhanced Penalty pursuant to Section 775.084(1)(a) and (4)(a), as an habitual felony offender, (R 20), but later chose not to pursue an HFO sentence. (Supp. R 148).

The jury returned a verdict of guilty as charged on both counts. (R 57-58).

Appellant's criminal punishment scoresheet totaled 95.8 points and provided for the lowest permissible prison sentence of 50.85 months. (R 82-85).

The trial court entered Judgment and sentenced Appellant to 15 years' imprisonment on Count 1 and to 5 year's imprisonment on Count 2, consecutively, with credit for time served. (R 123-130; Supp. R 170).

A timely Notice of Appeal was filed, (R 111-112), and this appeal ensued.

Appendix C
Excerpts from Supp. Brief

ARGUMENT

SUPPLEMENTAL ISSUE

WHETHER APPELLANT IS ENTITLED TO A NEW TRIAL BASED UPON THE VIOLATION OF HIS CONSTITUTIONAL RIGHT TO A TWELVE-MEMBER JURY?

STANDARD OF REVIEW

This Court reviews the constitutionality of a statute and the interpretation of a provision of the Florida Constitution pursuant to a de novo standard of review. See Planned Parenthood of Southwest and Central Florida v. State, 384 So. 3d 67, 76 (Fla. 2024).

MERITS

In view of the recent United States Supreme Court's decision to grant certiorari in Hamed Kian v. Florida, Case No. 25-6623, Appellant challenges the constitutionality of Section 913.10, Fla. Stat., which allows for a six-member jury, rather than a 12-member jury, in non-capital criminal cases. Like Kian, Appellant argues that Section 913.10, Fla. Stat., on its face, denied him his right to due process under the Sixth Amendment as applied through the Fourteenth Amendment, notwithstanding the decision to the contrary in Williams v. Florida, 399 U.S. 78 (1970). As in Kian, Appellant raises the same good-faith argument herein for a change

in the law and asks that this Court hold this appeal in abeyance pending the outcome in Kian. See generally Mitchell v. State, 160 So. 3d 902 (Fla. 2d DCA 2009) (recalling mandate to await dispositive opinion of the United States Supreme Court).

The Supreme Court has overturned precedent when warranted. See e.g., Roe v. Wade, 410 U.S. 113 (1973), overruled by Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022). This is especially true where that precedent is "irreconcilable with not just one, but two, strands of constitutional precedent well established both before and after the decision." See Ramos v. Louisiana, 590 U.S. 83, 112 (2020) (Sotomayor, J., concurring). And, "[t]he force of stare decisis is at its nadir in cases concerning procedural rules that implicate fundamental constitutional protections." See Alleyne v. U.S., 570 U.S. 99, 116 n.5 (2013).

It has long been understood that the right to a trial by jury meant a trial before a jury of twelve jurors. See Patton v. U.S., 281 U.S. 276, 288 (1930) (noting that it was "not open to question ... [t]hat the jury should consist of twelve men, neither more nor less[.]"); and Thompson v. Utah, 170 U.S. 343 (1898) (explaining that the jury referred to in the original Constitution and in the Sixth Amendment

constituted a jury of twelve persons). Historical precedent for the use of a twelve-person jury can be traced back to English common law, found in reference to ancient Greek and Roman trials, and carries biblical significance. See Gibson v. State, 16 Fla. 291, 300 (1877) (holding that historically, the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, Comment, Six of One Is Not a Dozen of the Other: A Reexamination of Williams v. Florida and the Size of State Criminal Juries, 146 U. Pa. L. Rev. 621, 633 (1998) (discussing twelve-member juries in ancient Greek and Roman trials (myth and real)); 4 W. Blackstone, Commentaries on the Laws of England 343 (1769) (stating that juries consisting of twelve people were commonplace in the English common law). See also 1 Edward Coke, The First Part of the Institutes of the Lawes of England 155 (photo. reprint 1979) (1628) ("And that number of twelve is much respected in holy Writ, as [twelve] apostles, [twelve] stones, [twelve] tribes, etc."); John Proffatt, Trial by Jury 112 n.4 (San Francisco, Sumner Whitney & Co. 1877) ("[T]his number is no less esteemed by our own law than by holy writ. If the twelve apostles on their twelve thrones must try us in our eternal state, good reason hath the law to appoint the

number twelve to try us in our temporal."). Despite this historical context, the Court in Williams, 399 U.S. 78, 89, found the number twelve to be a "historical accident."

When the Supreme Court approved Florida's continued use of six-member juries in felony trials, the Court used a functionalist approach to constitutional interpretation that contravened the original meaning of the Sixth Amendment. See Williams, 399 U.S. at 98-103. Specifically, in Williams, the Court reasoned that it could find "no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury." See Williams, at 99. According to the Court, "[t]he relevant inquiry . . . must be the function that the particular feature performs and its relation to the purposes of the jury trial." Id. at 99-100. "Measured by th[at] standard," the Court held, "the [twelve-person jury] requirement [for felony trials] cannot be regarded as an indispensable component of the Sixth Amendment," because "neither currently available evidence nor theory suggests that the [twelve-person] jury is necessarily more advantageous to the defendant than a jury composed of fewer members." Id. at 100-02 (footnotes omitted). In so ruling, the Williams Court rejected common law,

tradition, and constitutional precedents that the right to a jury trial meant a twelve-member jury.

Continuing with this functionalist approach, in Apodaca v. Oregon, 406 U.S. 404 (1972), the Court held that nonunanimous jury verdicts in state criminal trials comported with the Sixth Amendment. See Apodaca, 406 U.S. 404, 406. "Justice White, writing for the plurality, applied a Williams-style inquiry focusing upon 'the function served by the jury in contemporary society' and concluded that the requirement of unanimity was not 'of constitutional stature.'" See Guzman v. State, 350 So. 3d 72, 76 (Fla. 4th DCA 2022) (Gross, J., concurring specially) (quoting Apodaca, 406 U.S. at 406, 410).

Subsequently, in Ramos, 590 U.S. 83, 90, the Supreme Court adopted a more originalist approach, as opposed to the functionalism found in Williams. In Ramos, the Supreme Court held that the Sixth Amendment's "trial by an impartial jury" requirement encompassed what the term "meant at the time of the Sixth Amendment's adoption." 590 U.S. at 90. The Court wrote that the functionalist analysis relied on in Apodaca was flawed, and held that a

nonunanimous jury verdict did not comport with the Sixth Amendment's guarantees. See Id.

According to the special concurrence by Judge Gross in Guzman, although the Supreme Court never explicitly questioned the Williams decision in Ramos, the Court's functionalist reasoning in Williams is on shaky ground because of the Court's decision in Ramos. See Guzman, 350 So. 3d at 78 (Gross, J., concurring specially) ("It is a stretch to say that Ramos 'effectively overruled' Williams. Yet if applied to the issue of jury size, the originalist analysis in Ramos would under-cut Williams's functionalist underpinnings.").

On these bases, Appellant maintains that the Court's ruling in Williams is impossible to square with the Court's ruling in Ramos. This is especially true where the vast majority of states require twelve-member juries for felony cases and studies indicate 12-member juries provide fairer outcomes and function better. See Khorrami v. Arizona, 598 U.S. --, 143 S.Ct. 22 (2022) (Gorsuch, J., dissenting from the denial of certiorari) (noting that 44 States require a 12-member jury for serious crimes and that it was difficult to reconcile the practice of the only 6 States tolerating smaller panels

with the Constitution); and Ballew v. Georgia, 435 U.S. 223, 232 (1978) (noting research showing that smaller juries are less effective, less accurate, more inconsistent, and disproportionally harm the defendant and minority groups). As Justice Gorsuch explained, "Williams was wrong the day it was decided, it remains wrong today, and it impairs both the integrity of the American criminal justice system and the liberties of those who come before our Nation's courts." See Khorrami, 598 U.S. --, 143 S.Ct. 22, 23 (Gorsuch, J., dissenting from the denial of certiorari). Accordingly, this Court should hold this appeal in abeyance pending the outcome in Kian and, in the event that the Supreme Court determines that a criminal defendant is entitled to a twelve-person jury, reverse and remand for a new trial.