No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MARCUS ROLAND MAYE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether harmless-error review applies to a sentence imposed under a statute that facially violates the Fifth and Sixth Amendments by requiring the trial court, rather than the jury, to find by a preponderance of the evidence the facts that increase the defendant's mandatory sentence.

PARTIES INVOLVED

Marcus Roland Maye

State of Florida

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Marcus Roland Maye, requests that this Court issue a writ of certiorari to review the decisioin the Supreme Court of Florida entered in this case on May 14, 2026. Rehearing was denied on August 4, 2026.

DECISIONS BELOW

The opinion of the Florida Supreme Court is found at *Maye v. State*, 436 So.3d 416 (2026), and is included as Appendix A to the Petition.. The opinion of the Florida Sixth District Court of Appeal is found at *Maye v. State*, 368 So.3d 531 (Fla. 6th DCA 2023). (Appendix B). The order entered by the trial court on Maye's Rule 3.800(a) Motion to Correct Illegal Sentence is included as Appendix C.

BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Supreme Court of Florida.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment provides, in pertinent part, that "[n]o person . . . shall be deprived of life, liberty, or property, without due process of law ." U.S. CONST. amend. V.

The Sixth Amendment provides, in pertinent part, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation." U.S. CONST. amend. VI

The Fourteenth Amendment's Due Process Clause provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV.

Section 775.082(9), Florida Statutes, provides the following:

> (9)(a) 1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:
>
> a. Treason;
>
> b. Murder;
>
> c. Manslaughter;
>
> d. Sexual battery;
>
> e. Carjacking;
>
> f. Home-invasion robbery;
>
> g. Robbery;
>
> h. Arson;
>
> i. Kidnapping;
>
> j. Aggravated assault with a deadly weapon;
>
> k. Aggravated battery;
>
> *l.* Aggravated stalking;
>
> m. Aircraft piracy;
>
> n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
>
> *o.* Any felony that involves the use or threat of physical force or violence against an individual;

p. Armed burglary;

q. Burglary of a dwelling or burglary of an occupied structure;

r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5); or

s. Battery on a law enforcement officer which results in bodily injury;
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.

. . .

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have **the court** sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a **preponderance of the evidence** that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and **must be sentenced as follows:**

a. For a felony punishable by life, by a term of imprisonment for life;

b. For a felony of the first degree, by a term of imprisonment of 30 years;

c. For a felony of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court imposed sentence.

Fla. Stat. § 775.082(9) (emphasis added).

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Following his conviction for robbery with a deadly weapon, Marcus Maye was sentenced to a minimum mandatory sentence of life in prison. The trial court imposed a minimum mandatory sentence of life in prison because it concluded that Maye was a prison releasee reoffender pursuant to Fla. Stat. § 775.082(9) ("the PRR statute"). The trial judge noted that he had absolutely no discretion to sentence Maye to anything other than life in prison. (R9-12; Appendix D).

Maye subsequently filed a Rule 3.800(a) motion arguing that the PRR statute is unconstitutional on its face and as applied to his case. He asserted that the statute required the judge, instead of the jury, to conclude that he qualified as a prison releasee reoffender. He also noted that the statute only required the State to prove that he qualified as a prison releasee reoffender by a preponderance of the evidence. Maye relied upon the decisions of this Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), and the decision of the Florida Supreme Court in *Williams v. State*, 242 So.3d 280 (Fla. 2018), to support his arguments. (R9-14; Appendix D).

In support of his motion, Maye attached various documents. The documents included a Criminal Punishment Code Scoresheet which reflected that Maye's lowest permissible prison sentence, without application of the minimum mandatory sentence required by the PRR statute, was 67 months (5 years, 7 months) in prison. (R21-22; Appendix D).

The trial court denied Maye's motion. The trial court did not conduct any legal

analysis. It simply concluded that it was bound by the decision of the Fiftth District Court of Appeal in *Simmons v. State*, 322 So.3d 1129 (Fla. 5th DCA 2022). (R34; Appendix C).

On appeal, the Sixth District Court of Appeal affirmed the decision of the circuit court. The district court held that the PRR statute is constitutional because it concluded that (1) the date a defendant was released from prison or jail and the nature of the qualifying offenses are ministerial in nature and thus do not require jury findings; and (2) the date of release does not need to be proven beyond a reasonable doubt to a jury because it is directly derivative or related to a prior conviction. In support of those two conclusions, the district court cited the Florida Supreme Court's decision in *Robinson v. State*, 793 So.2d 891 (Fla. 2001), and various other decisions of the other district courts in Florida. (R72-74; Appendix B).

The Florida Supreme Court accepted jurisdiction on April 25, 2024. (Appendix E). It did so prior to this Court issuing its decision in *Erlinger v. United States*, 602 U.S. 821 (2024), on June 21, 2024.

In the Florida Supreme Court, the State conceded that the PRR statute is unconstitutional if May had properly raised the issue. *Maye*, 436 So.3d at 421 n.13. Nonetheless, the Supreme Court issued an opinion approving the result reached by the Sixth District. The Florida Supreme Court did not address Mr. Maye's argument that the PRR statute is unconstitutional on its face. Instead, it narrowly held that Rule 3.800(a), Fla. R. Crim. P., is not the proper vehicle for raising a claim of error under *Apprendi* and its progeny. *Id*. at 418-422 (Appendix A).

The Florida Supreme Court reached that decision by concluding that *Apprendi* claims are subject to harmless error review under both Florida and federal precedent. Because a sentence imposed in violation of *Apprendi* must be reviewed for harmless error, the Supreme Court reasoned, such a sentence cannot meet the requirement of being illegal on the face of the record necessary to support being granted relief under Rule 3.800(a). *Id*. at 419 (Appendix A).

In a footnote explaining why it chose not to address Maye's constitutional challenge on its merits, the Florida Supreme Court also noted that it had recently held that this Court's decision in *Erlinger* does not apply retroactively. *Id*. at 421 n.13. (Appendix at). In a concurring opinion, Justice Grosshans concluded that Maye was also not entitled to relief because the error at issue was not preserved in the trial court at the time of sentencing. *Id*. at 422 (Appendix A).

Justice Labarga issued a lengthy dissenting opinion in which he concluded that the PRR statute is unconstitutional on its face and that Maye should be granted a new sentencing hearing. *Id*. at 425-433 (Appendix A). His opinion commenced with the following passage:

> *Apprendi*, *Alleyne*, and *Erlinger*, collectively embrace the essential principle of our constitutional democracy that no person convicted of a crime should serve a day of imprisonment longer than the maximum sentence prescribed by the criminal statute governing the crime he or she committed—unless supported by the factual determination of a unanimous jury. As underscored by Justice Scalia in his concurrence in *Apprendi*, "the criminal will never get *more* punishment than he bargained for when he did the crime, and his guilt of the crime (and hence the

> length of the sentence to which he is exposed) will be determined *beyond a reasonable doubt by the unanimous vote of 12 of his fellow citizens*."
>
> Unfortunately, the expansive protections established by these three landmark Supreme Court cases are, in practice, too often treated as mere suggestions, rather than binding constitutional constraints.

Id. at 425-426 (Appendix A) (internal footnotes and citations omitted).

Justice Labarga continued by noting the following:

> this statutory scheme (the PRR statute) allows a *jury* to convict the defendant of the underlying crime beyond a reasonable doubt, only to then allow the *court* to enhance the sentence based upon a mere preponderance of the evidence that he or she reoffended within three years after being released from prison. In this case, the result was Maye being sentenced to a mandatory sentence of life imprisonment. It should come as no surprise, then, that the State conceded that Maye presents a meritorious argument under *Erlinger*.
>
> Here, Maye was convicted of robbery with a deadly weapon in 2002, which required a sentence of "imprisonment for a term of years not exceeding life imprisonment." If not for the sentencing enhancement mandated by the prison releasee reoffender statute, Maye could have reduced his time served in prison to 80% of the original sentence through the accrual of incentive gain-time. However, because the sentencing judge designated Maye a prison releasee reoffender, his life sentence was mandatory. Thus, the enhancement imposed all but guaranteed that Maye will never be released from prison.
>
> Given the clear mandate of *Apprendi*, *Alleyne*, and particularly *Erlinger*, Florida's Prisoner Releasee Reoffender Act is unconstitutional on its face and, consequently, as applied to Maye.

Id. at 430 (Appendix A)

Justice Labarga criticized the Maye majority for skirting the constitutionality of the PRR statute. He concluded that the majority's decision was flawed because "the harmless error rule has no role in an *Apprendi* analysis, and consequently, cannot pose an impediment to declaring Maye's sentencing enhancement as an "illegal sentence" for rule 3.800(a) purposes." *Id*. at 430-432 (Appendix A)

In support of that conclusion, Justice Labarga noted Justice Kavanaugh's dissenting opinion in *Erlinger* in which he concluded in that harmless error review will almost always apply to *Apprendi* errors. However, Justice Labarga also noted that Justice Kavanaugh's conclusion was not echoed by Justice Gorsuch in his majority opinion. Instead, Justice Labarga pointed to the language of Justice Gorsuch in which Gorsuch repeatedly indicated that findings of fact that are used to increase a defendant's sentence must be found beyond a reasonable doubt by a jury, even where the fact at issue is straightforward or supported by overwhelming evidence. *Id*. at 431 (Appendix A)

Justice Labarga concluded his dissenting opinion by making two observations about the majority's decision. First, he concluded that the majority "ignored 24 years of unambiguous directives from this Court" to reach its decision. *Id*. at 433 (Appendix A).

Second, he noted that, "[i]n the two decades following the "*Apprendi* decision, the Florida Legislature has not conformed the statute to constitutional standards, and the courts around the state continue to regularly sentence defendants pursuant to it. This

Court, rather than addressing the threshold question of the statute's constitutionality, chooses to sidestep it." *Id*. (Appendix).

Maye filed a motion for rehearing. The Court denied the motion. Judge Labarga indicated that he would have granted it. (Appendix at F).

REASONS FOR GRANTING THE PETITION

1. Harmless Error Review Does Not Apply to a Sentence Imposed Under a Statute that Facially Violates the Constitution by Requiring the Trial Court, Rather than the Jury, to Find by a Preponderance of the Evidence the Facts that Increase the Defendant's Mandatory Sentence.

Harmless error review does not apply to a facially unconstitutional statute. The Florida Supreme Court reached a contrary conclusion by failing to properly recognize the clear distinction between a challenge to an *Apprendi* error committed by a trial court applying a facially valid statute and a facial challenge to a statute, which based on its plain language, explicitly violates *Apprendi* and its progeny.

"It is not judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications. Indeed, a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling." *Citizens United v. Fed. Election Com'n*, 558 U.S. 310, 329 (2010); *See also Woods v. State*, 214 So.3d 803, 809 (Fla. 1st DCA 2017) (Makar, J., concurring) (citing *Citizens United* in support of conclusion that Fla. Stat. § 775.082(10) is facially unconstitutional based on *Apprendi* and its progeny).

Respectfully, the Florida Supreme Court's refusal to consider the merits of Maye's facial constitutional challenge to the PRR statute is based on fundamental flaw. The Supreme Court has conflated cases in which *Apprendi* errors are committed by trial judges that improperly interpret sentencing statutes that are silent on the identity of the finder of fact and applicable burden of proof with cases where the

statutes that compel an *Apprendi* violation by requiring that a judge make a finding of fact by preponderance.

The Florida Supreme Court cited to its previous decision in *Galindez v. State*, 955 So.2d 517 (Fla. 2007), this Court's decision in *Washington v. Recuenco*, 548 U.S. 212 (2006), and the federal circuit decision in *United States v. King*, 751 F.3d 1268 (11th Cir. 2014), for the general proposition that *Apprendi* claims are subject to harmless error review. Maye acknowledges that the cited cases stand for that general proposition.

Initially, in *Galindez*, the Florida Supreme Court relied upon this Court's decision in *Recuenco* to conclude that *Apprendi* claims are subject to harmless error review. *Galindez*, 955 So.2d at 521-523. Thus, the Florida Supreme Court relied upon this Court's precedent, not an independent state court basis, to reach that conclusion.

More importantly, in all three of those cases, the defendant did not raise a facial constitutional challenge to the statutes that supported the sentencing enhancement. There is good reason for that. The plain language of the statutes involved in all three of those cases did not require the trial judge to make the necessary findings of fact to support the enhancement, or set the relevant burden of proof at preponderance of the evidence. The statutes in those three cases were completely silent on those two issues. *See* Fla. Stat. § 921.0021(7) (*Galindez*); Wash. Rev. Code § 9.94A.533(3)(b) (*Recuenco*); 18 U.S.C. § 924(c)(1) (*King*).

By contrast, the PRR statute plainly violates the Fifth, Sixth, and Fourteenth

Amendments. The PRR statute explicitly and unequivocally requires "the court," not the jury, to make the findings of fact necessary to impose the mandatory PRR sentence. *See* Fla. Stat. § 775.082(9)(a)3.

The statutory language that references "the court" indicates that the Florida Legislature's intent was for the trial judge, not a jury, to make the factual findings necessary to impose a sentence pursuant to the PRR statute. Since its inception in 1997, the PRR statute has been universally interpreted to require a judge, not a jury, to make the necessary findings of fact. If the Legislature intended otherwise, it would have specifically used the term "jury" instead of "the court" in the statute.[1]

The PRR statute also requires that those findings be made by a preponderance of the evidence instead of beyond a reasonable doubt. *See* Fla. Stat. § 775.082(9)(a)3. As a result, the plain language of the PRR statute actually compels a violation of *Apprendi* and its progeny.

In this context, various courts around the country have held that harmless error review would not apply to facially unconstitutional statutes. The Pennsylvania Supreme Court has held the following:

> We are also unable to deem the violation inherent in the application of a sentencing statute that is unconstitutional on its own non-severable terms to be harmless. On this subject, we reject PDAA's contention that Pennsylvania courts should be completely unconcerned with the

[1] In the context of capital sentencing, the Florida Legislature has made this important distinction. In both the current and previous versions of section 921.141, Florida Statutes, the Legislature specifically indicated that the "jury" needs to make findings of fact on aggravating circumstances.

> unconstitutional provisions of mandatory minimum sentencing statutes, so long as constitutional requirements can be said to have been satisfied in the abstract. Although we realize that the Supreme Court of the United States and other courts have found *Apprendi*-based errors to be harmless in various cases, which are ably cited by the Commonwealth and its *amicus,* none of these concerned a scenario in which the underlying sentencing statute was itself found to be invalid and non-severable.

Pennsylvania v. Wolfe, 140 A.3d 651, 661-662 (Pa. 2016); *See also Pennsylvania v. Czonstka*, 350 A.3d 168, *3 (Penn. App Ct. 2025) (unpublished decision) (harmless error does not apply to statutes declared facially unconstitutional).

The Kansas Supreme Court has also held that harmless error does not apply when a statute facially violates *Apprendi* by permitting the judge, instead of a jury, to make the finding that enhances a defendant's sentence. *Kansas v. Gould*, 23 P.3d 801, 814 (Kan. 2001); *See also Kansas v. Santos-Garza*, 72 P.3d 560, 561-64 (Kan. App. Ct. 2003 (applying *Gould*); *Kansas v. Kneil*, 35 P.3d 797, 799-800 (Kan. App. Ct. 2001) (same).

Finally, the Hawaii Supreme Court has also held that a sentence imposed pursuant to a statute found to be facially unconstitutional based on *Apprendi* is illegal and must be vacated. *Hawaii v. Maugaotega*, 168 P.3d 562, 576-77 (Haw. 2007).

This is not a controversial conclusion. It is a straightforward proposition of constitutional law that a statute found to be facially unconstitutional is void and is treated as if it does not exist.

> When a statute is declared unconstitutional, it falls because it must yield to the basic, superior law. Broadly, an unconstitutional statute is void, despite the legislature's failure to repeal it, and its invalidity must be recognized or acknowledged as applied to any state of facts. Such a statute is not a law, has no existence, is a nullity, or has no force or effect or is inoperative. An act that has been declared unconstitutional is, in legal contemplation, as inoperative as though it had never been passed or written, and it is regarded as invalid, or void, from the date of enactment (not only from the date on which it is judicially declared unconstitutional) and at all times thereafter.

C.J.S. CONSTITUTIONAL LAW § 265 (2025) (internal footnotes omitted).

Here, the Florida Supreme Court failed to properly address the important distinction between *Apprendi* errors committed in cases with facially neutral statutes and errors compelled by facially unconstitutional statute. In the first scenario, it arguably makes sense to apply harmless error analysis because it was the sentencing judge, not the sentencing statute, that caused the error. However, in the second scenario, the judge was compelled by the plain language of the statute to commit an *Apprendi* violation. Because the sentence judge is constrained to follow the dictates of the statute, the only appropriate remedy is to find the statute unconstitutional on its face and grant the defendant a new sentencing hearing without application of the invalid statute.

This Court has never held that a facially unconstitutional statute is subject to harmless error review. There is no reason to render such a decision now.

To the contrary, invalidation of the PRR statute finds support in this Court's recent decision in *Erlinger*. In *Erlinger*, this Court concluded that, even in cases where

the finding of fact that supports the sentencing enhancement appears to be straightforward, the Constitution still requires that a jury, not a judge, make the finding. This Court explicitly held that "[t]here is no efficiency exception to the Fifth and Sixth Amendments." 602 U.S. at 842; *See also United States v. Cogdill*, 130 F.3d 523, 532- 542 (6th Cir. 2024) (Clay, J., dissenting) (detailed analysis of why harmless error should not apply).

Based on this language, there is no legitimate basis for a statute that compels a violation of the Fifth and Sixth Amendments to remain valid. Accordingly, this Court should conclude that the statute is unconstitutional on its face and remand for further proceedings in which Maye is sentenced without consideration of the PRR statute.

2. <u>This Case Was Not Decided on an Independent State Procedural Ground</u>.

The Florida Supreme Court explicitly relied upon this Court's decision in *Recuenco*, and the Eleventh Circuit's decision in *King,* to conclude that *Apprendi* errors are subject to harmless error review. Additionally, it also relied upon its previous decision in *Galindez*. But *Galindez* itself relied upon this Court's decision in *Recuenco*. Therefore, the Supreme Court's decision rests on federal law, or is at least, fairly interwoven with federal law. Accordingly, this Court has authority to review the Florida Supreme Court's decision. *See Michigan v. Long*, 463 U.S. 1032, 1040-1041 (1983).

3. **The Florida Appellate Courts Continue to Disregard this Court's Clear Directives**.

This Court has reiterated that the exception to the rule established in *Apprendi* is limited to the bare fact of a prior conviction over and over to the point of downright tedium." *Erlinger*, 602 U.S. at 1854. Despite that, the decision of the Florida Supreme Court in this case, and various other decisions of the Florida appellate courts, indicate that those courts remain in a state of judicial inertia. These courts remain unwilling to take the action required by a faithful application of the Constitution and this Court's precedents. This Court should accept review in this Court to make it even clear to the Florida courts and others courts around the county that statutes which compel violations of the Fifth and Sixth Amendments must be invalidated.

In *Dunlap v. State*, 435 So.3d 224 (Fla. 6th DCA 2026), a Florida district court of appeal rejected the defendant's facial challenge to a sentencing enhancement statute which requires a judge, not a jury, to make the necessary findings to impose the enhancement. The Florida appellate court concluded that the statute was not facially unconstitutional pursuant to *Erlinger* because there were circumstances in which it could be applied in a constitutional manner.

The appellate court cited three situations in which the statute could be constitutionally applied; (1) where the jury determines beyond a reasonable doubt in a verdict form the necessary factual findings to impose the sentencing enhancement, the trial court could then make its own findings of fact by a preponderance of the evidence as dictated by the statute: (2) where the defendant stipulates to the facts that

support the statutory enhancement; and (3) where the defendant stipulates to judicial factfinding.

In *Chang v. State*, 423 So.3d 437 (Fla. 4th DCA 2025), another Florida appellate court reached a similar conclusion. There, the district court of appeal also rejected a facial challenge to a statute which required a judge to make a factual finding that increased the lowest permissible sentence the defendant could receive. The district court relied upon the same potential applications that were described in *Dunlap*.

None of the hypothetical situations described in *Dunlap* or *Chang* constitute legitimate applications of the statute. Instead they all involve courts engaging in improper avoidance of the statute's plain language. If these purported applications are considered valid, a facial challenge to the statute could never be properly raised. *See Woods*, 214 So.3d at 807-808 (Makar, J., concurring).

The Florida courts are not alone. Recently, the Supreme Court of New Jersey held that a statute plainly violates *Erlinger*. Despite that fact, the Court allowed the statute to stand and remain operative. *See State v. Carlton*, 349 A.3d 1284 (N.J. 2026).

In *Citizen's United*, this Court held that part of a court's judicial responsibility is to consider facial challenges to the constitutionality of statutes. This Court reasoned that this responsibility is particularly important where inaction would result in continued uncertainty in many other cases. 558 U.S. at 333-334.

As Justice Labarga noted in his dissenting opinion, courts around the state continue to regularly sentence defendants pursuant to the PRR statute. By failing to

properly adjudicate a facial challenge to the PRR statute and other similar statutes, court are abdicating their duties to faithfully apply the United States Constitution. This Court should end this judicial inertia by accepting review and making the decision the Constitution requires.

4. Retroactivity is Not an Issue in this Case.

In a footnote, the Florida Supreme Court cited *Wainwright v. State*, 411 So.3d 392 (Fla. 2025), for the proposition that Erlinger does not apply retroactively. "But *Wainwright* did not hold that *Erlinger* announced a new rule. Instead, *Wainwright* concluded that '*even if Erlinger* constitutes a change of law, it does not apply retroactively.'" *Bailey v. State*, 432 So.3d 1242, 1243 n.1 (Fla. 5th DCA 2026).

Maye does not contend that *Erlinger* announced a new rule. *Erlinge*r simply confirmed clarified what this Court has been repeatedly saying from the outset when it decided *Apprendi.* Retroactivity is not an issue in a case because Maye relies upon *Apprendi* and was sentenced after that decision was rendered in 2000. *See Brown v. State*, 2025 WL 1534992 (Fla. 5th DCA May 30, 2025).

5. Preservation in the Trial Court is Not Required To Raise a Facial Constitutional Challenge to a Statute.

By failing to make the appropriate distinction between a case where an *Apprendi* error committed pursuant to a valid statute and a case where a sentence imposed pursuant to a statute which actual compels an *Apprendi* violation, Justice Grosshans mistakenly found that the error in this case was not properly preserved. However, just last year, the Florida Supreme Court held that a facial challenge to the

constitutionality of a statute did not need to be raised at the trial court level. *See Fletcher v. State*, 415 So.3d 147, 162 n.22 (Fla. 2025).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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