**IN THE**

**SUPREME COURT OF THE UNITED STATES**

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**JAMES CLARK III**
**Petitioner,**

**vs.**

**STATE OF FLORIDA,**
**Respondent.**

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# APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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| APPENDIX | DOCUMENT |
|---|---|
| A | Decision of Florida's First District Court of Appeal dated July 8, 2026. |
| B | Clark's Motion for Rehearing and Written Opinion filed on July 22, 2026. |
| C | First District's Order Denying Clark's Motion for Rehearing and Written Opinion dated August 17, 2026. |
| D | Clark's Motion to Correct Sentencing Error filed in the trial court. |

# APPENDIX A

# FIRST DISTRICT COURT OF APPEAL
# STATE OF FLORIDA

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No. 1D2024-1360

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JAMES CLARK III,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Alachua County.
Bo Bayer, Judge.

July 8, 2026

PER CURIAM.

James Clark III appeals his convictions and sentences for two counts of robbery with a firearm. He raises several issues, but we write only to address whether the trial court erred by proceeding to trial without first resolving the question of Clark's competency. The State properly concedes error on that issue. We reverse and remand for a retroactive competency determination, if one can be made. In all other respects, we affirm.

Before trial, defense counsel submitted a competency report from Dr. Mathew Nguyen, who opined that Clark was not competent to proceed. The trial court set a competency hearing. At that hearing, both parties requested a second evaluation, and the court continued the hearing until Clark could be evaluated by a

second expert. The court appointed Dr. Tonia Werner, who later opined that Clark was competent to proceed.

The record does not reflect that the trial court held a competency hearing after Dr. Werner's report or adjudicated Clark competent, despite the competing expert reports. Clark did not object when the case proceeded to trial without a competency determination. But once the record contains reasonable grounds to question a defendant's competency, the trial court must hold a competency hearing and enter a competency determination before proceeding. *See* Fla. R. Crim. P. 3.210(b), 3.212(b); *State v. Dortch*, 317 So. 3d 1074, 1080 (Fla. 2021).

This case is like *Davis v. State*, 393 So. 3d 309 (Fla. 1st DCA 2024). There, as here, the record included competing expert reports on competency but did not show that the trial court held a competency hearing or entered a written competency order before trial. *Id*. at 310. We reversed and remanded for a retroactive competency determination, if possible. *Id*.

Accordingly, on remand, the trial court shall determine whether it can make a retroactive determination of Clark's competency at the time of trial. If it can, and if the court finds that Clark was competent when tried, the court shall enter a *nunc pro tunc* written order finding him competent. The judgment and sentences will remain unchanged.

If the court cannot make a retroactive competency determination, or if it finds that Clark was incompetent at the time of trial, Clark is entitled to a new trial if and when he is competent to proceed. *See Davis*, 393 So. 3d at 310; *Zern v. State*, 191 So. 3d 962, 965 (Fla. 1st DCA 2016).

AFFIRMED in part; REVERSED in part; and REMANDED with instructions.

OSTERHAUS, C.J., and RAY and LONG, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Jessica J. Yeary, Public Defender, and Victor D. Holder, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and Miranda Lee Butson, Assistant Attorney General, Tallahassee, for Appellee.

# APPENDIX B

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

JAMES CLARK,

Appellant, CASE NO: 1D24-1360

v.

STATE OF FLORIDA,

Appellee,
_____/

MOTION FOR REHEARING / WRITTEN OPINION

COMES NOW, Appellant, JAMES CLARK, by and through undersigned counsel, and files this Motion for Rehearing / Written Opinion pursuant to Rule 9.330(a)(2)(D), Florida Rules of Appellate Procedure.

Defendant's Exclusion from the Courtroom:

Pursuant to Rule 9.330(a)(2)(D)(i), Appellant respectfully requests that the Court issue a written opinion that addresses Appellant's exclusion from the courtroom during his trial by the trial court. An opinion on this issue would necessarily construe Appellant's state and federal constitutional rights to confront witnesses against him and his state and federal constitutional rights to counsel. Art. I, § 16(a), Fla. Const.; Amend. V, U.S.

Const.; Amend. VI, U.S. Const.; Amend. XIV, U.S. Const. An opinion regarding Appellant's exclusion from the courtroom during his trial would provide a legitimate basis for Florida Supreme Court review. Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure, and Article V, section 3(b)(3) of the Florida Constitution permit the Florida Supreme Court to exercise jurisdiction over a decision from a district court of appeal that expressly construes a provision of the state or federal constitution.

Defendant's Enhanced Sentencing Under the PRR Statute:

Pursuant to Rule 9.330(a)(2)(D)(i), Appellant respectfully requests that the Court issue a written opinion that addresses Appellant's enhanced sentence under the prison releasee reoffender (PRR) statute. An opinion on this issue would necessarily construe Appellant's state and federal constitutional rights to have the facts that result in an enhanced sentence be charged in the charging document and found by a jury beyond a reasonable doubt pursuant to the Sixth and Fourteenth Amendments to the federal Constitution

and Article I, section 9, Article I, section 16, and Article I, section 22 of the Florida Constitution. An opinion regarding Appellant's enhanced sentence under the Florida PRR statute would provide a legitimate basis for Florida Supreme Court review. Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure, and Article V, section 3(b)(3) of the Florida Constitution permit the Florida Supreme Court to exercise jurisdiction over a decision from a district court of appeal that expressly construes a provision of the state or federal constitution. Rule 9.030(a)(2)(A)(i), Florida Rules of Appellate Procedure, and Article V, section 3(b)(3) of the Florida Constitution permit the Florida Supreme Court to exercise jurisdiction over a decision from a district court of appeal that expressly declares valid a state statute.

Twelve-Person Jury:

Pursuant to Rule 9.330(a)(2)(D)(i), Appellant respectfully requests that the Court issue a written opinion that addresses the twelve-person jury issue. An opinion regarding the constitutionality of trying a defendant for a felony with less than

twelve jurors would provide a legitimate basis for Florida Supreme Court review. Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure, and Article V, section 3(b)(3) of the Florida Constitution permit the Florida Supreme Court to exercise jurisdiction over a decision from a district court of appeal that expressly construes a provision of the state or federal constitution.

This issue is also currently pending in the United States Supreme Court in Kian v. Florida, No. 25-6623.

WHEREFORE, Appellant respectfully requests that this Court issue a written opinion addressing Appellant's exclusion from the courtroom during his trial, the enhancement of his sentence under Florida's PRR statute, and the twelve-person jury issue.

I HEREBY CERTIFY that a copy of the foregoing has been forwarded to Assistant Attorney General Miranda Lee Butson at crimapptlh@myfloridalegal.com and miranda.butson@myfloridalegal.com on this 22nd day of July, 2026.

Respectfully Submitted,

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT,
FLORIDA

/s/ Victor Holder
VICTOR HOLDER
Assistant Public Defender
Florida Bar No.71985
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COUNSEL FOR APPELLANT

# APPENDIX C

**DISTRICT COURT OF APPEAL, FIRST DISTRICT**
**2000 Drayton Drive,**
**Tallahassee, Florida 32399-0950**
**Telephone No. (850) 488-6151**

August 17, 2026

James Clark III,
Appellant(s)

v.

State of Florida,
Appellee(s).

**Case 1D2024-1360**
L.T. No.: 01-2021-CF-000094-A

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**BY ORDER OF THE COURT:**

The Court denies the motion for rehearing and written opinion docketed July 22, 2026.

**I HEREBY CERTIFY** that the above order is issued at the Court's direction.

Served:
Criminal Appeals TLH Attorney General
Florida Attorney General
Hon. Bo Bayer
Elizabeth Letitia Bryan
Miranda Lee Butson
Victor D. Holder
Hon. Stacy Ann Scott
Jessica J. Yeary

TH

1D2024-1360 August 17, 2026
Kristina Samuels, Clerk
1D2024-1360 August 17, 2026

# APPENDIX D

IN THE CIRCUIT COURT OF
THE EIGHTH JUDICIAL
CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA

v.

Circuit Case 2021CF94
1st DCA Case No. 1D24-1360

JAMES CLARK,

Defendant.
_____/

**MOTION TO CORRECT SENTENCING ERROR UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(b)(2)**

Defendant/Appellant, JAMES CLARK, hereby moves this Court to correct the following sentencing errors. In support, Defendant states:

1. Defendant was tried by jury and convicted of two counts of robbery with a firearm (R 215)[1]. The jury found that he actually possessed a firearm (R 215).

2. At his sentencing the Court found that Defendant qualified as a prison releasee reoffender (PRR) pursuant to section 775.082,

[1] Citations are to the record on appeal. The record will be referred to as "R" followed by the appropriate page number, all in parentheses. Trial transcripts will be referred to as "T" followed by the page number, all in parentheses.




"2021 CF 000094 A" 210623313 Filed at Alachua County Clerk 11/12/2024 08:15:00 AM EST

Florida Statutes, and sentenced him as a prison releasee reoffender for each count (T 934). The Court sentenced Defendant to the maximum of life in prison on both counts (T 938). The sentences were imposed consecutively (T 938). The Court did not orally pronounce any costs at sentencing (T 933-40). In its written sentencing order, the Court imposed a $100 cost of prosecution fee and a $100 indigent defense application fee (R 207). The State did not request the cost of prosecution fee at sentencing (T 933-40). The Court also imposed a $100 application fee for indigent defense in its written costs order (R 207).

3. An appeal has been taken from Defendant's conviction and sentence, which is pending before the First District Court of Appeal in Case No. 1D24-1360. No initial brief has been filed in the district court as of this date. Undersigned counsel has filed a Notice of Pending Motion to Correct Sentencing Error in the First District Court of Appeal as required by Florida Rule of Criminal Procedure 3.800(b)(2).

4. Defendant was represented at trial and sentencing by Elizabeth Bryan, Assistant Public Defender, 151 Southwest 2nd

Avenue, Gainesville, FL 32601. Undersigned counsel does not intend to represent Defendant in the trial court. Defendant therefore requests that Ms. Bryan represent Defendant at all appearances and hearings on this motion as necessary, pursuant to Florida Rule of Criminal Procedure 3.111(3). It is requested that all papers relative to or concerning this motion be served upon appellate counsel for the Defendant and the State, as well as trial counsel.

5. A calendar call should be held within 20 days, an evidentiary hearing (if necessary) should be held within 40 days, and a ruling should be issued within 60 days. See Fla. R. Crim. P. 3.800(b)(1)(B). The trial court has jurisdiction to extend the 60-day time limit if the extension is granted before the 60-day period expires. Davis v. State, 887 So. 2d 1286 (Fla. 2004). Unless it is necessary that another judge preside, this motion should be heard by the sentencing judge, the Honorable Bo Bayer. See Fla. R. Crim. P. 3.700(c); Kramer v. State, 970 So. 2d 468 (Fla. 2d DCA 2007).

6. For the reasons set forth in the following memorandum of law the Court erred by sentencing Defendant as a prison releasee

reoffender, by imposing a $100 cost of prosecution fee, and by imposing a $100 indigent defense application fee instead of a $50 application fee.

## MEMORANDUM OF LAW

### I. Defendant's designation as a prison releasee reoffender (PRR) is unconstitutional because the requisite facts were not charged in the information and found by a jury beyond a reasonable doubt.

The Court erred by finding that Defendant was a prison releasee reoffender. The PRR sentences are unconstitutional because the Court and not the jury found the requisite facts necessary to establish that Defendant was a prison releasee reoffender and because the Court did so by a preponderance of the evidence and not beyond a reasonable doubt. The requisite facts were also not charged in the charging document.

Alleyne v. United States, 133 S.Ct. 2151 (2013), held that the Sixth Amendment to the United States Constitution requires that any fact that increases the mandatory minimum sentence for an offense must be charged in the charging document, submitted to

the jury, and found beyond a reasonable doubt. The jury should have determined the requisite PRR-qualifying facts. This includes whether Defendant was previously released from prison and, if so, the date of Defendant's release from prison.

The First District, Fourth District, and Sixth District have rejected this argument in the past. See Williams v. State, 143 So. 3d 423 (Fla. 1st DCA 2014); State v. Wilson, 203 So. 3d 192 (Fla. 4th DCA 2016); Maye v. State, 368 So. 3d 531 (Fla. 6th DCA 2023). However, the United States Supreme Court's recent decision in Erlinger v. United States, 144 S.Ct. 1840 (2024), invalidates those earlier decisions and mandates that the facts necessary to qualify a defendant as PRR must be found by a jury beyond a reasonable doubt. On September 26, 2024, in its answer brief on the merits in the Florida Supreme Court in Maye v. State, SC23-1184, the State of Florida conceded that Erlinger applied to Florida's PRR statute: "Based on Erlinger, however, the PRR finding must be made by a jury." See State's Answer Brief on the Merits, pages 43-45.

Defendant's Sixth and Fourteenth Amendment rights were violated when the Court found by a preponderance of the evidence

that Defendant was a prison releasee reoffender. The factual findings qualifying Defendant as PRR should have been made by a jury beyond a reasonable doubt.

**II. The Court erred by ordering Defendant to pay a $100 cost of prosecution fee.**

In order for a sentencing court to impose a cost of prosecution fee pursuant to section 938.27, Florida Statutes, including the minimum $100 fee, the State must request the cost of prosecution at sentencing. D.L.J. v. State, 331 So. 3d 227, 228 (Fla. 2d DCA 2021). Section 938.27(1) requires law enforcement agencies to request their costs before the costs can be imposed. State attorneys' offices are law enforcement agencies. See City of Riviera Beach v. State, 82 So. 3d 198, 200 (Fla. 4th DCA 2012) (recognizing the state attorney's office as a "law enforcement agency" in charge of prosecution). The phrase "if requested by such agencies" in section 938.27(1) therefore applies to state attorneys' offices because they are law enforcement agencies. Section 938.27 requires the State to request its costs of prosecution.

Here, the State did not request that the cost of prosecution fee be imposed. Where the State fails to request the cost of prosecution fee at sentencing, it is prevented from doing so on remand. Richards v. State, 288 So. 3d 574, 576 (Fla. 2020); Skinkle v. State, 338 So. 3d 1099, 1100 (Fla. 5th DCA 2022). The State does not get a "forbidden second bite at the apple." Richards at 576. Here, the State waived the cost of prosecution by failing to request it at sentencing.

In Parks v. State, 371 So. 3d 392 (Fla. 1st DCA 2023), the First District has recently held that the State does not have to request the cost of prosecution in order for it to be imposed, but it recognized that its holding conflicted with D.L.J. from the Second District. Parks at 394. The Fifth District has also recognized conflict with D.L.J. in O'Malley v. State, 378 So. 3d 672, 674 (Fla. 5th DCA 2024). The Florida Supreme Court has accepted conflict jurisdiction in Parks v. State, 2024 WL 370043 (Fla. Jan. 31, 2024). Defendant must raise this issue here to preserve the issue for future appellate review.

### III. The Court erred by imposing a $100 indigent defense application fee instead of a $50 application fee.

Section 27.52(1)(b) provides that an indigent defendant "shall pay a $50 application fee to the clerk for each application for court-appointed counsel filed." §27.52(1)(b), Fla. Stat. The statute does not provide for an increased application fee of $100. The Court imposed an application fee of $100 without any statutorily authority to do so. "A trial court must provide a statutory basis for every cost imposed." V.D. v. State, 922 So. 2d 1037, 1038 (Fla. 5th DCA 2006). The application fee should have been $50. §27.52(1)(b), Fla. Stat.

Wherefore, Defendant respectfully requests that the Court strike Defendant's PRR designation and resentence him without the PRR designation. Defendant also requests that the Court strike from the Defendant's total assessment the $100 cost of prosecution and reduce the indigent defense application fee from $100 to $50.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been

furnished via the Florida Courts E-Filing Portal to the Honorable Bo Bayer; to Trisha Meggs Pate, Office of the Attorney General, at crimapptlh@myfloridalegal.com; to Elizabeth Bryan, Assistant Public Defender, at bryane@pdo8.org; to David Margulies, Assistant State Attorney at eservice@sao8.org; and by US Mail to James Clark, on this date, November 8, 2024.

Respectfully submitted,

JESSICA J. YEARY
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SECOND JUDICIAL CIRCUIT
*/s/ Victor Holder*
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