DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DARIOUS WILCOX

Petitioner,

vs.

STATE OF FLORIDA and
SEC'Y, DEP'T OF CORR.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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November 17, 2026

CAPITAL CASE

QUESTION PRESENTED

1. Whether this Court's Sixth Amendment holding in *Hurst v. Florida* is limited according to an Eighth Amendment eligibility/selection framework, which *Hurst v. Florida* never addressed.

PARTIES TO THE PROCEEDINGS

Petitioner, Darious Wilcox, a death-sentenced inmate, was the Appellant and Petitioner in the Florida Supreme Court.

The State of Florida was the Appellee in the Florida Supreme Court concerning Case No. SC2023-1498. The Secretary of the Florida Department of Corrections was the Respondent in the Florida Supreme Court concerning Case No. SC2024-0785.

RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following proceedings relate to the case at issue in this Petition:

Underlying Trial:

Circuit Court in and for Broward County, Florida
State of Florida v. Darious Wilcox, No. 08-003736 CF 10A
Judgment and Sentence Entered: May 16, 2011

Direct Appeal:

Florida Supreme Court, SC11-1017
Darious Wilcox v. State of Florida, 143 So. 3d 359 (Fla. 2014)
Opinion Issued: May 8, 2014, reh'g denied July 10, 2014

Supreme Court of the United States
Wilcox v. Florida, 574 U.S. 1161 (2015)
Certiorari Denied: Feb. 23, 2015, reh'g denied April 20, 2015

Postconviction Proceedings:

Circuit Court in and for Broward County, Florida
State of Florida v. Darious Wilcox, No. 08-003736 CF 10A
Order Summarily Denying Relief: Jan. 18, 2018

Florida Supreme Court (Appeal), SC18-146
Darious Wilcox v. State of Florida, 2019 WL 4391268 (Fla. Sept. 13, 2019)
Order Reversing: Sept. 13, 2019

Reversed and Remanded for Case Management Conference

Circuit Court in and for Broward County, Florida
State of Florida v. Darious Wilcox, No. 08-003736 CF 10A
Order Denying Relief Following Evidentiary Hearing: Sept. 26, 2023

Florida Supreme Court (Appeal After Remand), SC2023-1498
Darious Wilcox v. State of Florida, 436 So. 3d 434 (Fla. 2026)
Opinion Issued: May 21, 2026, reh'g denied July 20, 2026

State Habeas Proceedings

Florida Supreme Court (State Habeas Proceedings), SC2024-0785
Darious Wilcox v. State of Florida, 436 So. 3d 434 (Fla. 2026)

Opinion Issued: May 21, 2026, reh'g denied July 20, 2026

Federal Habeas Proceedings:

United States District Court, Southern District of Florida
Darious Wilcox v. Sec'y, Fla. Dep't of Corr., 26-62191-CIV-SINGHAL
Filed: August 7, 2026, *PENDING*

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Darious Wilcox respectfully petitions for a writ of certiorari to review the decision of the Florida Supreme Court.

OPINIONS BELOW

The Florida Supreme Court's opinion affirming the denial of state postconviction relief and denying Mr. Wilcox's petition for writ of habeas corpus is reported and available at *Wilcox v. State*, 436 So. 3d 434 (Fla. 2026), and attached at A1. The state lower court's order denying Mr. Wilcox's motion for postconviction relief is unreported but attached at A17.

JURISDICTION

The Florida Supreme Court issued its order affirming the denial of postconviction relief and denying Mr. Wilcox's petition for writ of habeas corpus on May 21, 2026. The Order denying rehearing was issued on July 20, 2026, and the mandate issued on August 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Due Process Clause of the Fourteenth Amendment to the United States

Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

CITATIONS TO THE RECORD

Citations to the record are as follows:

> Record on Direct Appeal to the Florida Supreme Court: (R[vol.#]. [pg.#]) and Trial Transcripts: (T[vol.#]. [pg.#]);
>
> Supplemental Record on Direct Appeal: (S[vol.#]. [pg.#]);
>
> Postconviction Record on Appeal from Summary Denial: (PCR. [pg.#]); and
>
> Postconviction Record on Appeal on Remand for Evidentiary Hearing: (2PCR. [pg.#]).

STATEMENT OF THE CASE

A. INTRODUCTION

Florida obtained Mr. Wilcox's death sentence through the exact capital sentencing scheme this Court struck down in *Hurst v. Florida*. But, incredibly, the Florida Supreme Court found ***no error*** in applying this scheme to Mr. Wilcox—even after granting new penalty phase proceedings to roughly 150 similarly situated death row inmates. The court denied relief on the theory that, notwithstanding contrary instructions, the jury found one or more aggravators during the guilt phase. The circumstances here are alarming given that Mr. Wilcox's jury, like Mr. Hurst's, returned only ***a bare, 7-5 majority recommendation for death***, following his counsel's presentation of a mere 20 pages of mitigation evidence and abject failure to investigate and negate the case in aggravation. The jury was not instructed to consider the facts used to support the aggravators the Florida Supreme Court

determined were sufficiently established. Instead, the court substituted its own findings, thereby usurping the role of the jury as established in *Hurst v. Florida*.

B. LEGAL FRAMEWORK

The Sixth Amendment guarantees, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury . . . and to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. The Due Process Clause proscribes deprivations of life or liberty by the states without "due process of law." U.S. Const. amend. XIV § 1. "Taken together, these rights indisputably entitle a criminal defendant to 'a jury determination that he is guilty of *every element* of the crime with which he is charged, beyond a reasonable doubt.'" *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000) (emphasis added) (quoting *United States v. Gaudin*, 515 U.S. 506, 510 (1995)).

This "is no mere procedural formality, but a fundamental reservation of power in our constitutional structure." *Blakely v. Washington*, 542 U.S. 296, 305-306 (2004). The jury stands "as an intermediary between the State and criminal defendants." *Alleyne v. United States*, 570 U.S. 99, 114 (2013); *Williams v. Florida*, 399 U.S. 78, 100 (1970) (noting "the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgement of a group of laymen"); *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968) (describing jury as "inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge").

These safeguards are inoperable without "the proper designation of the facts

that are elements of the crime." *Alleyne*, 570 U.S. at 104-105. Thus, through the Sixth Amendment and Due Process Clause, the Framers placed "a concrete limit" on the power of legislatures and judges to remove factual determinations from the jury's purview. *Id*. at 105; *Blakely*, 542 U.S. at 308 (noting "the very reason the Framers put a jury-trial guarantee in the Constitution is that they were unwilling to trust government to mark out the role of the jury").

In 2000, to reinvigorate the jury's historic role against a backdrop of legislative and judicial encroachments, this Court held: "Any fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt." *Apprendi*, 530 U.S. at 483. "*Apprendi*'s bright-line rule" has been enforced wherever the government seeks to impose criminal penalties. *Alleyne*, 570 U.S. at 103, 105; *Blakely*, 542 U.S. at 308. Unquestionably, this includes the penalty phase of capital trials. *Ring v. Arizona*, 536 U.S. 584 (2002). Applying *Apprendi* to such a proceeding, this Court unequivocally held: "If a State makes an increase in a defendant's punishment contingent on the finding of a fact, that fact—***no matter how the State labels it***—must be found by a jury beyond a reasonable doubt." *Ring*, 536 U.S. at 602 (emphasis added).

Notwithstanding this Court's plain edict, Florida refused to apply *Apprendi* and *Ring* to its capital sentencing scheme for more than a decade. The Florida Supreme Court ruled that the Sixth Amendment "does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury." *Wilcox v. State*, 143 So. 3d 359 (Fla. 2014) (citing *Bottoson v. Moore*, 833 So. 2d 693

(Fla. 2002); *King v. Moore*, 831 So. 2d 143 (Fla. 2002)). Resultantly, Florida continued to use an unconstitutional statute to obtain scores of death sentences, including Mr. Wilcox's.

At the time of Mr. Wilcox's trial, Florida's capital sentencing scheme conditioned death eligibility on the finding of statutorily defined facts in addition to the elements of first-degree murder. Fla. Stat. § 921.141 (2010). The judge alone found these additional facts, while the jury could return only a ***recommendation*** as to penalty. Fla. Stat. § 921.141(3). What's more, Florida law prohibited "special verdict form[s] that detail[ed] the jurors' votes on specific aggravating circumstances." *State v. Steele*, 921 So. 2d 538, 547-48 (Fla. 2005). Accordingly, the judge could not know which aggravators and mitigators the jury found in support of its recommendation. *Id.* at 546 (noting Florida's system "fosters independence because the trial court alone must make detailed findings about the existence and weight of aggravating circumstances" and "has no jury findings on which to rely").

After the jury made its recommendation, the statute required the trial court to make the following findings to impose death:

> (a) That sufficient aggravating circumstances exist as enumerated in subsection (5); and
>
> (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

Fla. Stat. § 921.141(3). This inquiry required the judge to look beyond the jury's verdict and recommendation, both expressly and as a practical matter. The statute drew a clear line between judicial factfinding and the jury's recommendation, instructing the judge to conduct its inquiry "[n]otwithstanding the recommendation

of a majority of the jury." Fla. Stat. § 921.141(3).

C. FACTUAL BACKGROUND

Mr. Wilcox was indicted on February 28, 2008 on one count of first-degree murder of Nimoy Johnson; four counts of armed kidnapping of Mr. Johnson, Stephanie Hankerson, Tanesha Arnold, and Veronica McMorris; and, one count of armed robbery with a firearm (R1. 8; 11). Wilcox's appointed counsel changed four times in the next 9 months. No investigator was assigned to his case and no defense investigation occurred. Resultantly, Wilcox moved to represent himself at the guilt phase.

On the night of his murder, Mr. Johnson had invited Hankerson to his home. She arrived in a Chevrolet Tahoe with McMorris and Arnold. As they entered, the women saw a dark figure and left. Mr. Johnson called Hankerson and explained that the dark figure was his friend and asked them to come back. Hankerson returned, but McMorris and Arnold stayed in the car. When Hankerson reentered Mr. Johnson's home, she saw a man holding a gun and wearing a baseball cap with a red or orange bandana covering his face. Hankerson then invited McMorris and Arnold inside. The masked man offered them marijuana and drinks before ordering everyone upstairs. According to McMorris, the masked man "didn't seem like he wanted to harm anybody" (S10. 158). The masked man directed Mr. Johnson to tie the women's hands and feet "so that he can get away," then took the Tahoe keys and ordered Mr. Johnson downstairs (S10. 160).

Neither Hankerson, Arnold, nor McMorris saw anything that happened next

or who was involved; however, they heard sounds indicating the opening and closing of a door. Hankerson testified that she heard a loud bang and, then, silence. She untied herself and went downstairs to discover that Mr. Johnson had been shot in the back of the head. The witnesses never identified the masked man. Notably, none identified Mr. Wilcox's voice as that of the masked gunman ***even when he personally cross-examined them at trial.***

The State's theory was that Mr. Wilcox killed Mr. Johnson to protect Richaunda Curry, Shaquira Curry, and Terrell Collier, who were Wilcox's cousins and Johnson's neighbors. About one week before Mr. Johnson's death, he accused the cousins of breaking into his home to steal drugs and money. Richaunda purportedly calmed him down. The State argued that Mr. Wilcox feared Mr. Johnson "was never going to let it go" and, thus, "had to do it, so now he won't bother [Wilcox's cousins] anymore" (T13. 337). The State's case rested largely on Terrell's claim that the masked man was Mr. Wilcox.

Mr. Wilcox maintained that Terrell killed Mr. Johnson and had given Wilcox the Tahoe afterwards. Then, Richaunda, Shaquira, and Terrell's associate, Willie Ward, helped frame Wilcox. Terrell's residence was never searched.

The jury found Mr. Wilcox guilty on all six counts (R1. 183-94). Mr. Wilcox invoked his right to counsel for the penalty phase. Attorney Joseph Walsh was assigned to represent Mr. Wilcox. Walsh spent minimal time preparing. His entire mitigation investigation consisted of a few client visits, (2PCR-989), interviews with just six witnesses totaling only five-and-a-half hours, (2PCR-714-26), and the

collection of minimal records, none of which were utilized. The penalty phase was held on August 3-4, 2009. The State presented the testimony of the lead detective and read the jury a letter from the victim's mother, Dorothy Murray (T20. 1134, 1171).

Throughout Mr. Wilcox's capital trial, the judge repeatedly reminded the jury of its role to render only an "advisory recommendation" as to sentence (T11. 167, 170; T20. 1115; T21. 1257). Before the guilt-phase, the trial court advised the jury that it "can take [the recommendation] into consideration" when it determined the ultimate sentence (T11. 170). The judge briefly described the role of aggravating circumstances, but clarified that whether the aggravators applied would not be decided "***until the guilt phase has been finished,*** which is why I say it is ***not even for your consideration***" (T11. 170) (emphasis added). Upon reconvening for the penalty phase, the trial court reiterated that the final decision on punishment "rests ***solely*** with this Court" and emphasized that the jury's role was to render only "an advisory sentence" (T20. 1115) (emphasis added).

The jury was instructed on four aggravating factors, all requiring factual determinations:

> 1) The defendant has previously or contemporaneously been convicted of another capital offense or felony involving the use or threat of violence to some person;
>
> 2) The crime was committed "while he was engaged or an accomplice in the commission of or attempt to commit the crime of robbery, burglary or kidnapping;"
>
> 3) The crime was committed "for the purpose of avoiding or preventing a lawful arrest or to effect an escape from custody;" and,
>
> 4) The crime was committed "in a cold, calculated and

> premeditated manner, without any pretense of moral or legal justification" ["CCP"].

(T21. 1258-60).

With respect to the prior violent felony, the jury was told it must find that "the prior offense must have been life threatening in nature and in which the perpetrator came into contact with the human victim" (T21. 1258-59). The State presented evidence that Mr. Wilcox was previously convicted of second-degree murder, armed robbery, and grand theft due to his involvement in the shooting death of Robert Lovett on March 8, 1992. Mr. Wilcox was not the shooter and was only 14 years old, but the State direct-filed the charges to adult court. He accepted a *nolo contendere* plea and was sentenced to ten years in Florida prison (R6. 972).

Trial counsel objected to the application of, and instruction on, the prior violent felony aggravator, but was overruled. Ultimately, the only evidence the jury heard in support of the aggravator was the following stipulated statement:

> On February 3rd, 1993, Darious Wilcox, along with three co-defendants, was convicted of second-degree murder, armed robbery and grand theft related to a shooting that occurred in Miami Dade County. Darious was convicted as a principal from the offenses and was not the individual who shot the victim. At the time of the offense, Darious was 14 years of age.

(T20. 1208).

In its closing argument, the State exceeded this stipulation, asserting:

> He's part of a group looking for someone to rob. They find a game of dice. They are going to be robbing the people playing dice. Gambling. He gets out of a vehicle to collect the money. Somebody else gets out of the vehicle and shoots one of the victims. That's what you know about that instance.

(T21-1222).

Trial counsel did not contest the aggravator's application. Instead, he told the jury that it was up to the State to prove that Mr. Wilcox had direct contact with the victim: "Whether or not that was there, I leave it up to you" (T20. 1249).

The "in the course of a felony" aggravator required the jury to find that the murder occurred "while [the defendant] was engaged or an accomplice in the commission of or attempt to commit the crime of robbery, burglary, or kidnapping" (T21. 1259). In turn, the "cold, calculated, and premeditated" aggravator required finding a "heightened level of premeditation demonstrated by a substantial period of reflection" and "without any pretense of moral or legal justification" (T21. 1260-61).

During the guilt phase, the State presented two theories of first-degree murder, premeditation and felony-murder (R1. 9). The verdict did not specify which theory the jury accepted (R1. 183-84). Taken together with the lack of any specific penalty-phase findings in aggravation or mitigation, the jury's verdict did not conclusively show that twelve jurors even found premeditation or felony-murder, let alone their respective, aggravated forms.

Consistent with the text of Fla. Stat. § 921.141(b) and (c), the bare existence of the aggravating circumstances was not enough to impose death. Rather, the trial court instructed, "if you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole" (T21. 1261). Further, the jury was told, "if you find two or more of the aggravating circumstances are proven beyond a reasonable doubt by a single aspect

of the offense, you are to consider that as supporting only one aggravating circumstance" (T21. 1261).

The trial court instructed the jury: "Should you find sufficient aggravating circumstances do exist to justify the recommendation of death, it will then be your duty to determine whether aggravating circumstances outweigh the mitigating circumstances that you find to exist" (T21. 1261).

In mitigation, the jury was told it could consider the "difficulty" of Mr. Wilcox's home life wherein his "crack- and heroin-addicted mother" was unable to nurture him, that the home was unstable, that society would be safe if he was in prison for life, that he was not the shooter in the prior 1992 case, and "[a]ny aspects of the defendant's character, record or background" that would mitigate against death (T21. 1261-62).

Trial counsel presented only one mitigation witness to the jury, Mr. Wilcox's mother, whose testimony, spanning just 20 pages, touched on her own drug addiction, the neighborhoods she was exposed to, and her minimal involvement in Mr. Wilcox's life (T20. 1188). Counsel presented no mental health evidence to the jury.[1]

In less than 50 minutes, the jury rendered its advisory recommendation of death by the barest majority: 7-to-5 (R1. 143; T21. 1274). The jury did not make any

[1] At a *Spencer* hearing, held after the jury was dismissed, counsel presented the testimony of a psychologist to only the trial court. *See Spencer v. State*, 615 So. 2d 688, 691 (Fla. 1993) (sentencing phase proceedings are to include a hearing, held outside of the purview of the jury, to allow all parties to be heard, present evidence, and "comment on or rebut information in any presentence or medical report"). However, as Mr. Wilcox presented in state court, counsel's failures to prepare the expert rendered his testimony incomplete, inaccurate, and ultimately harmful.

specific findings.

In May 2011, the trial court entered its judgements and sentenced Mr. Wilcox to death for murder and to life imprisonment for each of the remaining offenses (R5. 835-55). The trial court found all four aggravating circumstances, affording each "great weight" and imposed a death sentence (R5. 861-67). Likewise, the trial court made all findings as to mitigation, affording each "little weight." *Id.* The trial court noted that with respect to the prior violent or contemporaneous felony aggravator, "***the State has specifically decided not to rely on [Mr. Wilcox's] contemporaneous convictions*** to avoid any potential claim of 'doubling'" (R1. 862) (emphasis added). Accordingly, the court did "not consider . . . the contemporaneous convictions in analyzing this aggravating factor" (R1. 862).

D. PROCEDURAL HISTORY

Before the penalty phase of his capital trial, Mr. Wilcox challenged this sentencing scheme under *Ring* and *Apprendi* (R3. 424-45). He also moved the trial court to require specific findings in the jury's penalty phase verdict (R2. 283). The trial court denied both motions.

Mr. Wilcox raised the issue on direct appeal. Relying on its own decisions in *Bottoson* and *King*, the Florida Supreme Court denied his claim. Despite finding several points of error and striking the "avoiding arrest" aggravator, the court affirmed Wilcox's convictions and sentences. *Wilcox*, 143 So. 3d 359.

Wilcox petitioned for a writ of certiorari in this Court, including a claim that his death sentence violates *Ring*. The Court denied review on February 23, 2015.

Wilcox v. Florida, 574 U.S. 1161 (2015). Two weeks later, the Court granted review in *Hurst v. Florida*, Case No. 14-7505. Based on the Court's consideration of *Hurst*, Wilcox sought rehearing of the denial of certiorari, which was denied on April 20, 2015. *Wilcox v. Florida*, 575 U.S. 980 (2015).

On January 12, 2016, this Court struck down Florida's capital sentencing scheme as violative of the Sixth Amendment right to a jury trial and the Due Process Clause under *Apprendi* and *Ring*. *Hurst v. Florida*, 577 U.S. 92 (2016). *Hurst* held that a jury must find the facts required to render a defendant death eligible under Fla. Stat. § 921.141(3). *Id*. at 97. These facts included both that "sufficient aggravating circumstances exist" and that "there are insufficient mitigating circumstances to outweigh the aggravating circumstances." *Id.* at 100 (quoting Fla. Stat. § 921.141(3)). "[A] jury's mere recommendation is not enough." *Id*. at 94.

Wilcox filed his initial motion for postconviction relief just one month after *Hurst v. Florida* was decided. He maintained his claim of Sixth Amendment error and moved to stay his postconviction proceedings until the Florida Supreme Court considered *Hurst*'s impact (PCR. 659). On remand from *Hurst*, the Florida Supreme Court reiterated this Court's Sixth Amendment findings and further held that the Eighth Amendment and the Florida Constitution required the jury to unanimously find beyond a reasonable doubt that the aggravating circumstances existed, were sufficient to impose death, and outweighed the mitigating circumstances. *Hurst v. State*, 202 So. 3d 40, 53-59 (Fla. 2016).

In a series of cases, the Florida Supreme Court determined eligibility for relief

by applying two mechanical rules: (1) The *Hurst* decisions applied retroactively to death sentences that became final after *Ring* was decided on June 24, 2002. *Mosley v. State*, 209 So. 3d 1248, 1283 (Fla. 2016). (2) "*Hurst v. Florida* error was harmless beyond a reasonable doubt," if "the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations." *Davis v. State*, 207 So. 3d 142, 175 (Fla. 2016). If the recommendation was not unanimous, then the requisite factual findings could not be imputed to the jury and the error was not harmless. It was immaterial what aggravation had been presented or found by the trial court. *See Pagan v. State*, 235 So. 3d 317, 319 (Fla. 2018) (granting *Hurst* relief in a 7–5 case even though the prior violent felony and during the course of a felony aggravators were supported by jury findings).

The ***only*** question was whether the Sixth Amendment violation in each of these cases was harmless, not whether a Sixth Amendment violation occurred at all.

With a 7–5 vote, unquestionably, the Sixth Amendment error in Mr. Wilcox's case was not harmless. Thus, the postconviction court was required to grant him a new penalty phase (PCR-868). Indeed, the State conceded that controlling caselaw entitled Wilcox to relief (PCR. 851-52, 868). Mr. Wilcox's case was set for a *Huff* hearing, a requirement in Florida capital cases, during which the court would hear argument on purely legal claims and on whether any claims required an evidentiary hearing. Three weeks before the hearing, the court unexpectedly summarily denied Mr. Wilcox's 3.851 motion. The court did not issue a reasoned decision, instead denying the motion simply "pursuant to the State's Response" (PCR. 889). Because

the State's Response conceded that a hearing was warranted, (PCR. 868), it appeared the court had not even read the pleadings and assumed Mr. Wilcox's motion was meritless.

Wilcox appealed to the Florida Supreme Court, asserting, *inter alia*, that the postconviction court erred in failing to conduct a *Huff* hearing, and notwithstanding, that the court should grant relief on the Sixth Amendment claim. The record and law were clear—the claim was dispositive and Mr. Wilcox was entitled to a new penalty phase. A37.

On September 13, 2019, the Florida Supreme Court vacated and remanded Mr. Wilcox's case to the circuit court for a "*Huff* hearing and further proceedings." *Wilcox v. State*, SC18-146, 2019 WL 4391268, at *1 (Fla. Sept. 13, 2019). The court characterized the summary denial as "inexplicabl[e]." *Id*. However, it ignored Mr. Wilcox's request to address his ripe and dispositive *Hurst* claim.

Less than a month later, on October 11, 2019, the postconviction court held a status conference on Mr. Wilcox's motion. While on appeal, the presiding postconviction judge had retired and a new judge was assigned. Mr. Wilcox explained the case required a *Huff* hearing and alerted the court to his pending *Hurst* claims. In response, the State confidently announced that the Florida Supreme Court was revisiting the impact of *Hurst*, which "could well affect what happens in this court" (2PCR. 2970). The State emphasized more than once that this case before the Florida Supreme Court was "all briefed" and the decision was imminent (2PCR. 2970). The State again noted that if Mr. Wilcox was granted *Hurst* relief as required by the

"current law," there was no need for an evidentiary hearing on the penalty phase (2PCR. 2971).

The State agreed to set the *Huff* hearing for Wednesday, November 13, 2019 (2PCR. 2975). However, the day before the hearing, the State asked via email to reschedule. Curiously, the State could not have attended anyway because the prosecutor was out of town all week despite previously agreeing to, and having never moved to reschedule, the hearing date. Nevertheless, the postconviction court canceled the *Huff* hearing and waited until January 9, 2020, to reschedule it for February 7, 2020.

In the interim, on January 23, 2020, the Florida Supreme Court decided *State v. Poole*, 297 So. 3d 487 (Fla. 2020). Mr. Wilcox moved to amend his *Hurst* claim to discuss *Poole*'s impact on his case.

In January 2021, a fourth judge was assigned to Mr. Wilcox's postconviction proceedings. With leave of court, Wilcox amended his *Hurst* claim. In response, the State changed its position and argued that there was no Sixth Amendment error at all because Mr. Wilcox's prior felony convictions and the jury's findings of the contemporaneous convictions both satisfied "the requirements set out in *Hurst v. Florida* and interpreted in *Poole*" (2PCR. 306). The State agreed to an evidentiary hearing on Mr. Wilcox's penalty phase ineffective assistance of counsel claim, which the postconviction court granted.

At the hearing, Mr. Wilcox presented evidence establishing that the prior violent felony aggravator was unsupported by the evidence and improperly found by

the trial court, thus, undermining the prior violent felony aggravator presented and found by the trial court. The stipulation read to the jury was inaccurate and incomplete. Evidence established that Mr. Wilcox neither knew of or assisted in the planning of the robbery, nor made any contact with the victim.

Following the limited evidentiary hearing, the postconviction court denied all relief. A17. Regarding Mr. Wilcox's *Hurst* claim, the court held:

> [T]his Court must apply Poole to the Defendant. Pursuant to Poole this Court finds the jury unanimously convicted the Defendant of armed kidnapping and armed robbery and therefore also unanimously found the prior or contemporaneous violent felony aggravator.

A21; (2PCR. 1907).

Wilcox's jury made no specific determinations as to the statutorily defined facts necessary to impose death, including the existence of sufficient aggravation and the insufficiency of mitigation to overcome aggravation, and his case was final more than a decade after *Ring*, yet the state court denied relief finding *Poole* was satisfied because one or more aggravators were found at the ***guilt phase***. Of note, the Wilcox jury was not instructed to consider the concurrent convictions for the contemporaneous felony aggravator and the State explicitly announced it was not relying on the concurrent felonies for that aggravator; yet, the postconviction court determined that the existence of the concurrent felonies alone satisfied the requirements for the contemporaneous aggravator, and therefore, sufficient aggravation existed to overcome *Hurst* error (2PCR-1907).

Mr. Wilcox appealed to the Florida Supreme Court raising numerous challenges to the postconviction court's denial of his *Hurst* claim. A37.

Simultaneously, he filed a Petition for Writ of Habeas Corpus in the Florida Supreme Court, invoking the court's habeas jurisdiction to "remedy an intolerable justice resulting from the lower court's arbitrary denial of *Hurst* relief." A315-20, A379.

This Court decided *Erlinger v. United States*, 602 U.S. 821 (2024), while Mr. Wilcox's appeal and petition were still pending. *Erlinger* involved 18 U.S.C. § 924(e)(1) of the Armed Career Criminal Act, which imposed lengthy mandatory minimum sentences "if the defendant has three prior convictions for 'violent felonies' or 'serious drug offenses' that were 'committed on occasions different from one another.'" 602 U.S. at 825. Over Mr. Erlinger's request for a jury, a judge had made the requisite findings of fact. *Id.* at 827. Finding this judicial factfinding violated Mr. Erlinger's right to a jury trial, this Court reiterated the "firmly entrenched" principle that "only a jury may find 'facts that increase the prescribed range of penalties to which a criminal defendant is exposed.'" *Id*. at 833 (quoting *Apprendi*, 530 U.S. at 490). *Erlinger* clarified that a jury determination is required for "even seemingly straightforward factual questions." *Id*. at 849.

Mr. Wilcox and the State both filed supplemental briefing to address *Erlinger*. Therein, Mr. Wilcox argued that *Erlinger* supported his claim to relief under *Hurst*, highlighted the prejudice caused by trial counsel's ineffectiveness, and vitiated the Florida Supreme Court's decision in *Poole*. A193-218; A260-278.

Nevertheless, the Florida Supreme Court affirmed the denial of relief finding: "*Poole* supplies the governing legal standard, and under that standard, [Wilcox] is not entitled to relief" and "neither the Sixth nor Eighth Amendment requires a jury

to make the sufficiency or weighing determinations called for by the death-penalty statute." *Wilcox v. State*, 436 So. 3d 434, 452-53 (Fla. 2026); A9-10. Refusing to apply *Erlinger*, the court found the "sufficiency and weighing determinations do not resemble the factual errors addressed in *Erlinger*." A9; *Id.* at 451. Apparently finding that determining "whether [a defendant's] past offenses occurred on three or more different occasions" was a more "fact-laden task" than the entire penalty phase of a capital trial, the court found:

> [T]he sentencing judge's sufficiency and weighing determinations do not resemble the factual findings addressed in *Erlinger*. By its terms, considering and weighing aggravators and mitigators involves value judgment—not a fact-intensive assessment of when and where certain crimes were committed . . . ("[D]eciding whether [a defendant's] past offenses occurred on three or more different occasions is a fact-laden task."). Thus, *Erlinger* does not cast doubt on *Poole*.

A9 (internal citations omitted).

REASONS FOR GRANTING THE PETITION

Poole stands in direct conflict with *Apprendi* and its progeny, most notably *Hurst*. The Florida Supreme Court has effectively nullified *Hurst* by limiting its holding based on the irrelevant, extra-textual eligibility-selection framework. In Mr. Wilcox's case, the Florida Supreme Court made clear that it will not self-correct despite this Court's strongest affirmation of *Apprendi* yet in *Erlinger*. *Poole*—not *Apprendi*, not *Ring*, not *Hurst*, and not this Court—now governs capital sentencing proceedings throughout Florida. A9-10; *Wilcox*, 436 So. 3d at 451 (holding "*Poole* supplies the governing legal standard").

This affront to the jury's role and the Constitution's supremacy cannot stand.

This Court's intervention is warranted.

I. THE FLORIDA SUPREME COURT'S DECISIONS IN *WILCOX* AND *POOLE* STAND IN DIRECT CONFLICT WITH *HURST V. FLORIDA*.

Determining *Hurst v. Florida* does not control the constitutionality of Florida's capital sentencing statute section 941.121(3)(b), *Poole* limited *Hurst*'s holding to so-called "eligibility" criteria, as distinguished from "selection" criteria. 297 So. 3d at 501, 503. *Poole* found that section 921.141(3)(b) required "not a finding of fact, but a moral judgement." *Id.* at 503 (quoting *United States v. Gabrion*, 719 F.3d 511, 533 (6th Cir. 2013)). This "question of mercy" was too "subjective" to "be analogized to an element of a crime," unlike "the 'aggravating-factor determination,' which [was] 'a purely factual determination.'" *Id.* at 503 (quoting *Kansas v. Carr*, 577 U.S. 108, 119 (2016)). Despite *Hurst*'s express language to the contrary, *Poole* found that even if the "selection finding" were a fact, it was not an element *under Apprendi* because it "[did] not 'expose' the defendant to the death penalty by increasing the legally authorized range of punishment." *Id.* In doing so, the *Poole* court has rewritten *Hurst* error.

Hurst v. Florida determined—as a matter of federal constitutional law—that the facts "that sufficient aggravating circumstances exist" and "that there are insufficient mitigating circumstances to outweigh the aggravating circumstances" are elements of the offense that must be found by a jury. 577 U.S. at 100. *Hurst v. Florida* reasoned that because Florida's capital sentencing scheme makes specific, enumerated findings prerequisite to death sentences, those findings must be found by a jury. *Id.* at 99-100 (quoting Fla. Stat. § 775.082(1)) ("[T]he Florida sentencing statute does not make a defendant eligible for death until 'findings *by the court* that

such person shall be punished by death.'"). These findings included both that "sufficient aggravating circumstances exist" and that "there are insufficient mitigating circumstances to outweigh the aggravating circumstances." *Id.* at 100. "[A] jury's mere recommendation is not enough." *Id.* at 94.

Hurst v. Florida was a straightforward application of *Ring*. *Id.* at 98 (noting "[t]he analysis the *Ring* Court applied to Arizona's sentencing scheme applies equally to Florida's"). The Court found: "Like Arizona at the time of *Ring*, Florida does not require the jury to make the critical findings necessary to impose the death penalty," but rather "requires a judge to find these facts." *Id.* at 98 (citing Fla. Stat. § 921.141(3)). Florida's "advisory jury verdict that Arizona lacked" was "immaterial." 577 U.S. at 98. What's more, the Court already "made clear that this distinction [was] immaterial," nearly 30 years prior. *Id.* at 99 (quoting *Walton v. Arizona*, 497 U.S. 639, 638 (1990)). Even with the advisory jury verdict, "the maximum punishment Timothy Hurst could have received without any judge-made findings was life in prison without parole." *Id.* at 99. Because "a judge increased Hurst's authorized punishment based on her own factfinding . . . Hurst's sentence violates the Sixth Amendment." *Id.* at 99.

Hurst v. Florida expressly rejected Florida's argument "that when Hurst's sentencing jury recommended a death sentence, it 'necessarily included a finding of an aggravating circumstance." *Hurst*, 577 U.S. at 99. The Court reasoned:

> The State fails to appreciate the central and singular role the judge plays under Florida law. As described above and by the Florida Supreme Court, the Florida sentencing statute does not make a defendant eligible for death until

> "findings *by the court* that such person shall be punished by death." ***The trial court alone must find "the facts . . . that sufficient aggravating circumstances exist" and "that there are insufficient mitigating circumstances to outweigh the aggravating circumstances."*** "The jury's function under the Florida death penalty statute is advisory only." The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires.

Id. at 99-100 (emphasis added).

Rather than effectuate this plain language, the Florida Supreme Court imported the eligibility-selection distinction from Eighth Amendment caselaw that *Hurst* neither cited nor even alluded to. Straining to find a lack of clarity where none existed, *Poole* observed: "It helps to first consider *Hurst v. Florida* in light of the principles underlying the Supreme Court's capital punishment cases," which "address two different aspects of the capital decisionmaking process: the eligibility decision and the selection decision." 297 So. 3d at 501 (quoting *Tuilaepa v. California*, 512 U.S. 967, 971 (1994)).

The "eligibility decision," according to *Poole*, required "that the trier of fact must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase." *Poole*, 297 So. 3d at 501 (quoting *Tuilaepa*, 512 U.S. at 971-72). The "selection decision," on the other hand, required "an individualized determination that assesses the defendant's culpability, taking into account 'relevant mitigating evidence of the character and record of the defendant and the circumstances of the crime.'" *Id.* at 501 (quoting *Tuilaepa*, 512 U.S. at 972). Applying this framework to Florida's capital sentencing scheme, *Poole* held that "*Hurst v. Florida* is about eligibility, not selection." *Id.*

Already *Poole* had drifted far afield of *Apprendi* by relying on *Tuilaepa*. *Tuilaepa* observed: "Our capital punishment cases *under the Eighth Amendment* address two different aspects of the capital decisionmaking process: the eligibility decision and the selection decision." 512 U.S. 967, 971 (1994) (emphasis added). Notably, *Poole* omitted *Tuilaepa*'s reference to the Eighth Amendment. *Poole*, 297 So. 3d at 501. Instead, *Poole* referred generally to "the Supreme Court's capital punishment cases." *Id.* Thereby, *Poole* simply ignored the fact that its basic premise hailed from an unrelated line of cases.

Plainly, *Hurst* was a Sixth Amendment case, not an Eighth Amendment case. The majority opinion did not mention the Eighth Amendment even once. *See generally*, 577 U.S. 94-103. Nor did *Hurst* discuss the eligibility-selection framework. *See e.g.*, *Id.* at 99-100. The word "eligible" was used without any accompanying reference to a "selection decision." *See e.g.*, *Id.* at 99. In fact, when *Hurst* used "eligible" as part of an actual holding, it cut against *Poole*'s suggestion that the "eligibility decision" only involved aggravators. *See id.* at 99-100. *Hurst* held, "the Florida sentencing statute does not make a defendant *eligible* for death until 'findings *by the court* that such person shall be punished by death'" and, in the next sentence, found "the trial court *alone* must find 'the facts . . . that sufficient aggravating circumstances exist' and 'that there are insufficient mitigating circumstances to outweigh the aggravating circumstances.'" *Id.* at 99-100 (first emphasis added).

If this Court had intended to limit *Hurst*'s holding based on the eligibility-selection framework, it would have said so. It did not. It did not so much as cite

Tuilaepa or even use the word "selection."[2]

Applying *Poole* to Mr. Wilcox, the Florida Supreme Court determined that *Poole* supplied three purportedly dispositive rules. First, "neither the Sixth nor Eighth Amendment requires a jury to make the sufficiency or weighing determinations called for by the death-penalty statute." A9; *Wilcox*, 436 So. 3d at 453 (citing *Poole*, 297 So. 3d at 501-508). Second, "nor . . . is a jury constitutionally required to make any sentencing recommendation at all." *Id.* (citing *Poole*, 297 So. 3d at 501-508). And, third, "as a matter of constitutional law, all the jury must do is 'unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt.'" *Id.* (quoting *Poole*, 297 So. 3d at 491).

None of these rules state, or even operate as rough facsimiles of, "the fundamental principles established by" *Apprendi* and its progeny. *See Abdul-Kabir v. Quarterman*, 550 U.S. 233, 258 (2007). As a preliminary matter, the second rule,

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[2] Furthermore, *Hurst*'s repeated references to mitigating circumstances bely *Poole*'s suggestion that *Hurst*'s "exclusive focus" was "on aggravating circumstances, the central object of the Court's death eligibility jurisprudence." *Poole*, 297 So. 3d at 501; *see* also *Hurst*, 577 U.S. at 96 (quoting Fla Stat. § 921.141(3)) (noting "the court, after weighing the aggravating *and mitigating* circumstances, shall enter a sentence of life imprisonment or death"); *id.* (quoting *Blackwelder v. State*, 851 So. 2d 650, 653 (Fla. 2003) (noting "the sentencing order must 'reflect the trial judge's independent judgement about the existence of aggravating *and mitigating* facts'"); *id.* at 98-99 (quoting *Walton*, 497 U.S. at 648) (noting "in Florida the jury recommends a sentence, but it does not make specific factual findings with regard to the existence of *mitigating* or aggravating circumstances and its recommendation is not binding on the trial judge"); *id.* at 100 (quoting Fla. Stat. § 921.141(3)) (noting "trial court *alone* must find 'the facts . . . that sufficient aggravating circumstances exist' and 'that there are insufficient mitigating circumstances to outweigh the aggravating circumstances'"); *see also*, *id.* at 105 (Alito, J., dissenting) (observing "the jury may recommend a death sentence only if it finds . . . one or more aggravating factors . . . and only after weighing the aggravating *and mitigating* factors").

although technically true, is wholly irrelevant. Clearly, the jury is not "required to make any sentencing recommendation." A9; *Wilcox*, 436 So. 3d 454. The jury's relegation to the advisory role of recommending a sentence was part-and-parcel of the Sixth Amendment violation at the core of Florida's capital sentencing scheme. The two other rules contravene the basic principle animating *Apprendi* and its progeny: "If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—***no matter how the State labels it***—must be found by a jury beyond a reasonable doubt." *Ring*, 536 U.S. at 602 (emphasis added).

Tuilaepa addressed California's vastly different sentencing statute. In California, juries were required to make specific findings during the guilt phase as to both the first-degree murder charge ***and*** the "special circumstances," 512 U.S. at 970 (emphasis added), that rendered the capital defendant eligible for the death penalty. At a separate penalty phase proceeding, the jury was further instructed "to consider the relevant sentencing factors" before returning a unanimous determination for death. *Id.* at 970. In other words, juries in California, unlike juries in Florida, made the findings of fact necessary to impose death. Even assuming *arguendo* that *Tuilaepa*'s eligibility-selection distinction were relevant in the *Apprendi* context, it did not support *Poole*'s conclusion that a jury needn't make the "selection decision" because in *Tuilaepa* the jury made that decision.

The "eligibility" inquiry referenced in *Tuilaepa* determined whether the offense was categorically eligible for a death sentence as a matter of Eighth

Amendment law. This was made abundantly clear by *Tuilaepa*'s citation to *Coker v. Georgia*, 433 U.S. 584 (1977), which held that "a sentence of death is grossly disproportionate and excessive punishment for the crime of rape." 433 U.S. at 592. *Tuilaepa* addressed only the issue of "whether three of [California's] penalty factors are unconstitutionally vague under . . . the Cruel and Unusual Punishments Clause of the Eighth Amendment . . ." *Tuilaepa*, 512 U.S. at 969-70. At bottom, *Tuilaepa* involved no question and delivered no holding the Florida Supreme Court could legitimately rely on to limit *Hurst*.

Relying on *Kansas v. Carr*, 577 U.S. 108, 119 (2016), yet another Eighth Amendment case, *Poole* held, "the section 921.141(3)(b) selection finding is not a 'fact.'" 297 So. 3d at 503. Rather, it is "mostly a question of mercy" that "stands in stark contrast to the 'aggravating-factor determination,' which is 'a purely factual determination.'" *Id.* at 503 (quoting *Carr*, 577 U.S. at 119). Nor was the selection finding an element, according to *Poole*, because "a subjective determination like the one that section 921.141(3)(b) calls for cannot be analogized to an element of a crime; it does not lend itself to being objectively verifiable." *Poole*, 297 So. 3d at 503.

This holding stands in direct conflict with *Apprendi*. Whether a fact is "objectively verifiable" has no bearing on whether it is an element. *Apprendi* held that "*any fact* that, by law, increases the penalty for a crime is an 'element.'" *Accord Alleyne*, 570 U.S. 99 at 103 (quoting *Apprendi*, 530 U.S. at 483 n.10). No exception from this rule allows a judge to impose a heightened sentence simply because it is based on a "subjective determination" instead of "objectively verifiable" facts. *Contra*

Poole, 297 So. 3d at 503.

More fundamentally, *Poole*'s holding that "the section 921.141(3)(b) selection finding was not a 'fact,'" 297 So. 3d at 503, was incoherent. If not a finding of fact, then what was it? The Florida Supreme Court said, "mostly a question of mercy." *Id.* at 503. But a question of mercy based on what? The statute provided an obvious answer—facts. *See* Fla. Stat. § 921.141(3) (providing "the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6)").

The capital sentencing statute enumerated the mitigating circumstances upon which judges were to base death sentences. Each required a plainly factual finding. *See e.g.*, Fla. Stat. § 921.141(6)(a) (requiring "defendant has no significant history of prior criminal activity"); § 921.141(6)(b) ("defendant was under the influence of extreme mental or emotional disturbance"); § 921.141(6)(c) ("victim was a participant in the defendant's conduct or consented to the act"); § 921.141(6)(d) ("defendant was an accomplice" whose "participation was relatively minor"); § 921.141(6)(e) ("defendant acted under extreme duress or . . . substantial domination"); § 921.141(6)(f) (defendant's capacity to appreciate criminality of conduct or conform conduct to law "was substantially impaired"); § 921.141(6)(g) (defendant's age); § 921.141(6)(h) ("any other factors in defendant's background").

Nothing inherent to these mitigating circumstances made them more subjective than the aggravators enumerated in Fla. Stat. § 921.141(5). *Compare* Fla. Stat. § 921.141(5)(a) (aggravating offense if defendant was "under sentence of

imprisonment" at time of offense), *and* Fla. Stat. § 921.141(5)(b) (aggravating offense if "defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person"), *with* Fla. Stat. § 921.141(6)(a) (mitigating offense if "defendant has no significant history of prior criminal activity"). Regardless of whether a circumstance was considered aggravating or mitigating, it was necessarily based on "finding some facts to support it beyond the bare elements of the offense." *Blakely*, 542 U.S. at 305 n.8.

The right to a trial by jury "is no mere procedural formality, but a fundamental reservation of power in our constitutional structure." *Blakely*, 542 U.S. at 305-306. The jury stands "as an intermediary between the State and criminal defendants." *Alleyne*, 570 U.S. at 114; *Williams*, 399 U.S. at 100; *Duncan*, 391 U.S. at 156. But it cannot perform this role without "the proper designation of the facts that are elements of the crime." *Alleyne*, 570 U.S. at 104-105. Thus, through the Sixth Amendment and Due Process Clause, the Framers placed "a concrete limit" on the power of legislatures and judges to remove factual determinations from the jury's purview. *See Alleyne*, 570 U.S. at 105; *Blakely*, 542 U.S. at 308. Regardless, *Poole* held that the label assigned to a fact—eligibility or selection—determined whether a jury must find it. As such, *Poole*'s basic premise rests on a prototypical violation of *Apprendi*—the manipulation of the jury's authority by relabeling the elements of the offense. Resultantly, Florida has permitted courts to usurp the role of the jury and redefine Sixth Amendment error in violation of *Hurst v. Florida*.

II. FLORIDA WILL NOT SELF-CORRECT GIVEN ITS PERSISTENT DISREGARD FOR THIS COURT'S PRECEDENT GOVERNING THE RIGHT TO TRIAL BY JURY.

Florida has a history of blatantly disregarding this Court's precedent. In the fourteen years between *Ring* and *Hurst*, Florida recognized *Ring*'s holding "that capital defendants are entitled to a jury determination of any fact on which the legislature conditions an increase in the maximum punishment;" however, it "considered *Ring* inapplicable in light of [the Court's] repeated support of Florida's capital sentencing scheme in pre-*Ring* cases." *Hurst*, 577 U.S. at 97. Specifically, the Florida Supreme Court pointed to *Spaziano v. Florida*, 468 U.S. 447 (1984), and *Hildwin v. Florida*, 490 U.S. 638 (1989).

Hurst conclusively established that neither *Spaziano* nor *Hildwin* survived *Apprendi*. Indeed, both were "wrong, and irreconcilable with *Apprendi*." *Hurst*, 577 U.S. at 101-02. This Court noted: "Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*." *Id*.

In the years after *Hurst*, however, the Florida Supreme Court has attempted to reconstitute *Spaziano* from its smoldering embers to justify its refusal to apply this Court's precedent, including persuasive authority *Erlinger v. United States*. In doing so, the Florida Supreme Court has rendered this Court's decisions null by construing its holding as extraordinarily narrow. For example, *Poole* held:

> As we have explained, the Supreme Court in *Spaziano* upheld the constitutionality under the Sixth Amendment of a Florida judge imposing a death sentence even in the face of a jury recommendation of life—a jury override. It necessarily follows that the Sixth Amendment, as interpreted in *Spaziano*, does not require any jury recommendation of death, much less a unanimous one. **And as we have also explained, the Court in *Hurst v.***

> ***Florida* overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance.**

Poole, 297 So. 3d at 504 (emphasis added) (internal citations omitted).

Poole's contortion of *Hurst*'s rulings is irreconcilable with *Hurst*'s analysis and Sixth Amendment jurisprudence. The Florida Supreme Court has taken this Court's overruling of *Spaziano* "in part" wildly out of context. *Spaziano* reasoned that the "fundamental issue involved" in the Sixth Amendment analysis is the "determination of the appropriate punishment on the individual;" and because the "[t]he Sixth Amendment has never been thought to guarantee a right to a jury determination of that issue," the Court declined to find so. *Poole*, 297 So. 3d at 459. *Hurst* expressly overruled *Spaziano* and held that a jury's fact finding is fundamental to the determination of the appropriate punishment.

Even when this Court expressly overruled its own precedent to restore the jury's historic role, as it did in *Spaziano* and *Hildwin*, Florida has clung to that precedent in an effort to resist the jury's check on judicial power. The Florida courts cannot be relied upon to reverse course now and relinquish authority to the jury.

This Court's intervention is imperative.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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