No.

IN THE SUPREME COURT OF THE UNITED STATES

CARNELLE BRAY, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

DANIEL EISINGER
Public Defender

Paul Edward Petillo
Assistant Public Defender
Counsel of Record

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

September 2, 2026

CARNELLE BRAY, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2025-1742** L.T. No. - 502023CF010426AXXXMB

BY ORDER OF THE COURT:

ORDERED that Appellant's August 14, 2026 Motion for Rehearing and Motion to Certify a Question of Great Public Importance is denied.

Served:
Crim App WPB Attorney General
Patrick Barfield Burke
Paul Edward Petillo
Palm Beach Public Defender
Shelby Katherine Smith
Palm Beach State Attorney
Lindsay Ayn Warner

SM

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

4D2025-1742 September 2, 2026

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

4D2025-1742 September 2, 2026

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CARNELLE BRAY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-1742

[July 30, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; James Edward Nutt, Judge; L.T. Case No. 502023CF010426AXXXMB.

Daniel Eisinger, Public Defender, and Paul Edward Petillo, Assistant Public Defender, West Palm Beach, and Bryan Ramsaran, Certified Legal Intern, Miami Gardens, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Lindsay A. Warner, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

CIKLIN, CONNER and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

STATEMENT OF THE CASE AND FACTS

A. *Jurisdictional Statement*

Appellant was convicted by a six-person jury of possession of a firearm by a convicted felon. R 160; T 761. He was sentenced to community control. R 186, 194. Appellant filed a timely notice of appeal. Fla. R. App. P. 9.140(b)(3) (notice of appeal must be filed within 30 days of order imposing sentence). This Court has jurisdiction to review a criminal judgment and sentence under article V, section 4(b)(1), Florida Constitution; Florida Rule of Appellate Procedure 9.140(b)(1)(A); and sections 924.02, 924.05, and 924.06(1), Florida Statutes.

B. *Trial Evidence*

The facts of the case are fairly simple. Appellant lived in his mother's three-bedroom house with his mother (Clara), Maurice Poole, and Vernon Gregg. T 266, 555. One morning the police arrived to search the house based on a warrant that had nothing to do with appellant. T 337. The four occupants were taken outside while the police searched the house. T 262. A firearm was found on a nightstand in one of the bedrooms. T 269.

POINT IV

APPELLANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO TRIAL BY A TWELVE-MEMBER JURY

Appellant recognizes that Florida allows a jury of six in non-capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat. The Supreme Court held this does not violate the Sixth Amendment in *Williams v. Florida*, 399 U.S. 78 (1970). He submits, however, that *Williams* was incorrectly decided and is contrary to the understanding of the Sixth Amendment at the time of the Founding. *See Cunningham v. State*, 144 S. Ct. 1287–88 (2024) (Gorscuch, J., dissenting from denial of certiorari).

Appellant recognizes that this Court has rejected this claim. *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022). Nonetheless, he maintains that the correct view is set out in Justice Gorsuch's dissent in *Cunningham*. In addition, there are two cases currently pending in the United States Supreme Court raising this issue: *Parada v. United States*, No. 25-166, and *Minor v. Florida*, No. 24-7489. The Court ordered the government to respond to the petition in *Parada* and it ordered the State to respond to the petition in *Minor*. This is some

indication that the Court is once again interested in addressing the issue.

The error is fundamental. Waiver of the constitutional right of trial by the proper number of jurors must be made by the defendant. *See Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997). Appellant did not waive his right to a twelve-person jury. Further, section 913.10, Florida Statutes, is unconstitutional on its face. A defendant may raise the facial constitutionality of a statute for the first time on appeal. In *State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004).

Appellant's conviction by a six-member jury violates the Sixth Amendment to the United States Constitution. The conviction and sentence should be reversed with instructions to afford appellant a new trial.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION "W"

STATE OF FLORIDA
vs.

CASE NO.: 23CF010426AMB

Carnelle Bray,
Defendant/Appellant,

_____/

ORDER OF INSOLVENCY

Upon a determination of indigent status and upon the Defendant's request for an appeal or the Defendant's filing of the Notice of Appeal, it is

ORDERED AND ADJUDGED that the Defendant is declared insolvent and indigent for purpose of appeal in accordance with the provisions of Florida Rule of Criminal Procedure 3.111, Florida Rule of Appellate Procedure 9.430 and section 27.52, Florida Statutes, (2023) and it is further

ORDERED AND ADJUDGED that the Public Defender of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, is appointed to represent this Defendant for appeal.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.

50-2023-CF-010426-AXXX-MB 06/25/2025
James Nutt Circuit Judge

50-2023-CF-010426-AXXX-MB 06/25/2025
James Nutt
Circuit Judge

Copies furnished:
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