

No. 16-1159

IN THE SUPREME COURT OF THE UNITED STATES

.....

State of Florida,
Petitioner,

v.

Eric Lee Simmons,
Respondent.

.....

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

[Capital case]

[Restated]: Should this Court intervene when a state court of last resort identifies which determinations must be made by a jury in order for a court in that state to impose a death sentence?

[Restated]: When a state court of last resort holds that the Eighth Amendment, as well as its own caselaw, requires a unanimous jury to recommend a death sentence, and the state legislatively adopts that unanimity requirement, should this Court intervene?

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OPINION BELOW

The State seeks review of Simmons v. State, 207 So. 3rd 860 (Fla. 2016).

THIS COURT'S JURISDICTION

The Petitioner relies on 28 U.S.C. §1257(a). The Respondent's position is that that statute does not confer jurisdiction on this Court, because the decision below rests on adequate and independent state grounds.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury....

U.S. Constitution, Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article I, Section 16, Florida Constitution: In all criminal prosecutions the accused shall..have the right...to have a speedy and public trial by impartial jury....

Article I, Section 17, Florida Constitution: ...[C]ruel and unusual punishment... [is] forbidden.... The prohibition against...cruel and unusual punishment shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States

Constitution....

Article I, Section 22, Florida Constitution: The right of trial by jury shall be secure to all and remain inviolate....

Section 918.0157, Florida Statutes: In each prosecution for a violation of a state law...the defendant shall have, on demand, the right to a trial by an impartial jury....

Rule 3.440, Florida Rules of Criminal Procedure: ...No verdict may be rendered unless all of the trial jurors concur in it.

Section 921.141, Florida Statutes (2014)

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY. - Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the person should be sentenced to death or life imprisonment.... In the hearing, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant....

(2) ADVISORY SENTENCE BY THE JURY. - After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated

[below];

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH. -

Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) that sufficient aggravating circumstances exist as enumerated [below], and

(b) that there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death penalty, the determination of the court shall be supported by specific written findings of fact based upon the circumstances [enumerated below] and upon the records of the trial and the sentencing proceedings.

Section 921.141, Florida Statutes (2016)

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY. -

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth [below].

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

- a. Whether sufficient aggravating factors exist.
- b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
- c. based on the considerations in sub-subparagraphs a and b, whether the

defendant should be sentenced to life imprisonment without the possibility of parole or death.

(c) If at least 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If fewer than 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

(3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH. -

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.

2. Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

...(4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH. - In each case in which the court imposes a sentence of death, the court shall, considering the records of the trial and the sentencing proceedings, enter a

written order addressing the aggravating factors...found to exist, the mitigating circumstances...reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence....

2017 amendment to Section 921.141 (Ch. 2017-1, §1, Laws of Florida)

(2)(c) If a unanimous jury determines at least 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not ~~fewer than 10 jurors~~ determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

The statement set out at pages 2-5 in the Petition for Writ of Certiorari filed in this case is accurate. Respondent was resentenced to death in October, 2014, and on appeal from that resentencing was granted relief because his jury had recommended death by a count of 9-3. The State now seeks review of the decision granting the latter relief.

REASONS TO DENY THE WRIT

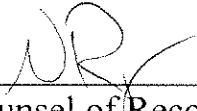
The State of Florida, in the petition it filed in this matter, sought as relief only “that the Court hold this petition pending its disposition of the State’s petition in [*Florida v. Hurst*, No. 16-998] and dispose of this case accordingly.” Petition at 6. This Court has now denied review in *Florida v. Hurst*. The Respondent in this matter adopts the brief in opposition filed by the Respondent in *Florida v. Hurst*, and asks this Court to grant the State the sole relief it sought in this matter, *i.e.*, that this Court dispose of this case as it did *Hurst*.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nancy Ryan, a member of the Bar of the Supreme Court of the United States and counsel of record for the Petitioner, hereby certify that on June 5, 2017, pursuant to Supreme Court Rule 28, I served a single copy of the foregoing Petition for Brief in Opposition to the Writ of Certiorari filed by the State of Florida, on the State of Florida, the Respondent, by electronic mail to Pamela Bondi, Attorney General, at capappdab@myfloridalegal.com. The undersigned further sent this petition by U.S. Mail to Eric Simmons, Lake County Jail, 551 West Main Street, Tavares, FL 32778.



NANCY RYAN