No. _____

In the Supreme Court of the United States

STATE OF FLORIDA,
Petitioner,

v.

PAUL BEASLEY JOHNSON,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Sixth Amendment gives a defendant convicted of a capital crime the right to have a jury make statutorily mandated non-factual findings supporting the imposition of the death penalty, such as the determination that aggravating circumstances outweigh mitigating factors and the related moral judgment that the defendant should be sentenced to death.

Whether the Eighth Amendment requires jury sentencing in capital cases.

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the Supreme Court of Florida:

1) The State of Florida, petitioner in this Court, was the appellee below.

2) Paul Beasley Johnson, respondent in this Court, was the appellant below.

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PETITION FOR A WRIT OF CERTIORARI

The State of Florida (hereinafter "the State") respectfully petitions for a writ of certiorari to review the judgment of the Florida Supreme Court in this case.

OPINIONS BELOW

The opinion of the Florida Supreme Court (Pet. App. 1a–17a) is reported at 205 So. 3d 1285 (2016). The sentencing order of the state trial court (Pet. App. 18a–50a) is unreported.

JURISDICTION

The Florida Supreme Court entered judgment on December 1, 2016. Pet. App. 1a. On February 24, 2017, Justice Thomas extended the time for filing a petition for a writ of certiorari to and including April 15, 2017. This Court's jurisdiction rests on 28 U.S.C. § 1257(a). The Florida Supreme Court grounded its judgment on its prior holding in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). Pet. App. 1a, 9a–10a. For the reasons set forth in the petition for a writ of certiorari to review that case, no adequate and independent state-law ground precludes the exercise of jurisdiction here. *See* Pet. for Writ of *Cert.* 1, 14–17, *Florida v. Hurst*, No. 16-998 (filed Feb. 13, 2017).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Pertinent constitutional and statutory provisions are reproduced in Appendix C to this petition (Pet. App. 51a–59a).

STATEMENT

1. Prompted by this Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972), the Florida legislature enacted statutory reforms intended "to assure that the death penalty will not be imposed in an arbitrary or capricious manner." *Proffitt v. Florida*, 428 U.S. 242, 252–53 (1976) (plurality opinion). By giving trial judges "specific and detailed" instructions, *id.*, such reforms sought to ensure that courts presiding over capital cases conduct "an informed, focused, guided, and objective inquiry" into the grave and difficult question whether a defendant convicted of first-degree murder should be sentenced to death. *Id.* at 259.

Under the statutory regime at issue here, a defendant convicted of a capital crime may not be sentenced to death unless the trial court makes certain specified findings—including the determination that at least one statutory aggravating circumstance exists and the determination that aggravating circumstances outweigh mitigating circumstances. *See* Fla. Stat. § 921.141(3) (2010). Pursuant to Florida's hybrid sentencing procedure, a sentencing jury renders an advisory verdict, but the judge makes the ultimate sentencing determinations. *See* Fla. Stat. § 921.141(2), (3). For several decades following the enactment of that scheme, this Court repeatedly reviewed and upheld the constitutionality of Florida's capital sentencing procedures. *Hurst v. Florida*, 136 S. Ct. 616, 623 (2016); *see, e.g.*, *Hildwin v. Florida*, 490 U.S. 638 (1989); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Barclay v. Florida*, 463 U.S. 939 (1983); *Enmund v. Florida*, 458 U.S. 782 (1982); *Dobbert v. Florida*, 432 U.S. 282 (1977).

2. Following a "drug-fueled hunt for money to purchase more drugs," Pet. App. 11a–12a, Respondent Paul Beasley Johnson was apprehended, charged, and convicted of, among other crimes, three counts of first-degree murder, *id.* at 2a. The crime spree began one evening after Johnson and his wife, along with two friends, took injections of crystal methedrine and smoked marijuana. Johnson told his friends that he was heading out to obtain money to buy more drugs and, if necessary, he would rob or shoot someone. *Id.*

The first of Johnson's three victims was William Evans, a taxicab driver who never returned after being dispatched to pick up a fare. Evans' body was found days later, roughly a mile from his taxicab, which had been set on fire in an orange grove. *Id.* at 3a. Johnson's fingerprints were found in the vehicle. *Id.* at 5a–6a. The second victim, Ray Beasley, was a Good Samaritan who encountered Johnson in a restaurant parking lot. Johnson claimed his car had broken down, so Beasley offered to drive Johnson to a friend's house. During the car trip, Johnson tricked Beasley into pulling over and attacked him on the side of the road. Beasley's friend, who had remained in the car, witnessed the attack and managed to escape by driving off. Beasley's body was found later that day, hidden from view in the weeds. *Id.* at 3a–5a. His wallet was missing. During the search for Beasley's attacker, the third victim, Deputy Sheriff Theron Burnham, radioed that he had seen a possible suspect on the road. When officers arrived at Burnham's location, they found his patrol car unoccupied with the motor running. Johnson then appeared and shot at the officers with a handgun before running off into the woods. Burnham's body was discovered in a

roadside drainage ditch; he had been shot three times. *Id.* at 4a.

During the guilt phase of the proceeding, Johnson was convicted of three counts of first-degree murder, two counts of attempted first-degree murder, two counts of robbery with a firearm, and individual counts of kidnapping and arson. At the conclusion of the penalty phase of the proceeding, the court sentenced Johnson to death. *Id.* at 2a. After the conclusion of certain proceedings not relevant here, a new penalty phase proceeding was conducted in 2013. *Id.* at 7a. The jury returned an advisory recommendation of death by a vote of eleven-to-one for each of the three murders. *Id.* Following a hearing, the trial court found the existence of three statutory aggravators as to the murder of victim Evans, three statutory aggravators as to the murder of victim Beasley, and two statutory aggravators as to the murder of victim Burnham.[1] *Id.* at 48a.

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[1] The trial court found the following aggravating circumstances to exist:

1) The Defendant was previously convicted of another capital felony or felony involving the use or threat of violence to a person. (Applied to all three victims)

2) The capital felony was committed while the Defendant was engaged in the commission of, or an attempt to commit or in flight after committing or attempting to commit, arson or kidnapping. (Applied to victims Evans and Beasley)

3) The capital felony was committed for financial gain. (Applied to victims Evans and Beasley)

4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape

The aggravating circumstance common to all three victims was that Johnson had been convicted of another capital felony or felony involving the use or threat of violence to a person. *Id.* at 21a. This prior felony aggravator was based upon Johnson's contemporaneous convictions, recited above, for three counts of first-degree murder, two counts of attempted first-degree murder, and multiple counts of attempted murder and other violent felonies. Each of these convictions had been entered by Johnson's guilt phase jury.

The court considered three statutory mitigating circumstances and ten non-statutory ones. Pet. App. 7a–8a. After determining that "the aggravating circumstances far outweigh the mitigating circumstances for all three murders," the trial court sentenced Johnson to death, and he appealed. Pet. App. 48a.

3. After Johnson was sentenced but before the Florida Supreme Court decided his appeal, this Court held in *Hurst v. Florida* that Florida's capital sentencing regime violated the Sixth Amendment, overruling two prior cases rejecting constitutional challenges to Florida's capital sentencing regime "to the extent they

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from custody. (Applied to victim Burnham; this aggravator was merged with aggravator number 5)

5) The victim of a capital felony was a law enforcement officer engaged in the performance of his or her official duties. (Applied to victim Burnham)

6) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. (Applied to victims Evans and Beasley)

Pet. App. 21a–34a.

allow a sentencing judge to find an aggravating circumstance, independent of the jury's factfinding, that is necessary for the imposition of the death penalty." 136 S. Ct. 616, 624 (2016). On remand, the Florida Supreme Court interpreted the federal Constitution to require that the jury not only find the existence of one or more aggravating circumstances, but also to make the normative determinations that such circumstances were sufficient to warrant death and were not outweighed by mitigation. In the Florida Supreme Court's view, a jury must make all of those determinations unanimously, and it must also unanimously recommend a sentence of death. *Hurst*, 202 So. 3d at 44.

Based on its ruling in *Hurst*, the Florida Supreme Court vacated Johnson's death sentence and remanded for a new penalty phase proceeding. The court "reject[ed] the State's contention that Johnson's contemporaneous convictions for other violent felonies insulate Johnson's death sentences from *Ring* and *Hurst v. Florida*," Pet. App. 9a, because—among other considerations—the court could not "determine how many jurors may have found the aggravation sufficient for death" and also could not determine "if the jury unanimously concluded that there were sufficient aggravating factors to outweigh mitigating factors," *id.* at 13a (quotation marks omitted); *see also id.* at 11a–12a (acknowledging that "[t]he facts of this case obviously include substantial aggravation," but emphasizing that the record also "demonstrated that the evidence of mitigation was extensive and compelling" (quotation marks omitted)).

4. On February 13, 2017, the State petitioned for a writ of certiorari to review the Florida Supreme Court's

decision in *Hurst*. As that petition explains (at 18–33), the Florida Supreme Court's decision in *Hurst* conflicts with this Court's prior holdings in cases involving Sixth and Eighth Amendment challenges to Florida's capital sentencing regime, in addition to Sixth and Eighth Amendment holdings in other state high courts and federal appellate courts. As the petition also explains (at 14–17), the Florida Supreme Court's analysis of the right to a jury trial under the Florida Constitution does not supply an adequate and independent state-law ground for the judgment that would divest this Court of jurisdiction to review the case. The response to the State's petition in *Hurst* is due April 19, 2017, and the conference date has not yet been set.

REASONS FOR GRANTING THE PETITION

The Florida Supreme Court vacated Johnson's death sentence based on its prior decision in *Hurst*. Pet. App. 1a, 9a. That was error. Under Florida's capital sentencing scheme, Johnson's contemporaneous convictions for multiple counts of first-degree murder and other violent felonies sufficed to establish the existence of one or more statutorily enumerated aggravating circumstances. *See* Fla. Stat. § 921.141(5)(b) (setting forth aggravating circumstances to include when "the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person"); *Francis v. State*, 808 So. 2d 110, 136 (Fla. 2001) ("This Court has repeatedly held that where a defendant is convicted of multiple murders, arising from the same criminal episode, the contemporaneous conviction as to one victim may support the finding of the prior violent felony aggravator as to the murder of another victim."). Those convictions, entered

by a unanimous jury during the guilt phase of the trial, did not have to be reestablished by the jury during the sentencing phase of the proceeding. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("*Other than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.") (emphasis added); *Alleyne v. United States*, 133 S. Ct. 2151, 2160 n.1 (2013) (recognizing the "narrow exception . . . for the fact of a prior conviction" set forth in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998)).

Once the existence of an aggravating circumstance is properly established, a jury need not make other statutorily required determinations supporting the imposition of the death penalty. *See Hurst*, 136 S. Ct. at 624 (overruling *Spaziano* and *Hildwin*, but only "to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty"); *id.* (concluding that Florida's capital sentencing scheme was unconstitutional because it "required the judge alone to find the existence of an aggravating circumstance"); Pet. for Writ of *Cert.* 18–33, *Florida v. Hurst*, No. 16-998 (filed Feb. 13, 2017). Thus, the State's position here is stronger than it was in *Hurst*, since the jury in this case did make all the

findings necessary to render Johnson eligible for death.[2]

Regardless whether the decision below was wrong, the Florida Supreme Court's expansive reading of this Court's decision in *Hurst* warrants further review. As the State explained in its petition for a writ of certiorari in *Hurst*, there is a clear conflict between the Florida Supreme Court's Sixth and Eighth Amendment holdings and prior decisions of this Court, other state high courts, and the federal courts of appeals. And the questions presented are sufficiently important to merit this Court's review. In conjunction with other subsequent rulings, including the decision below, the Florida Supreme Court's decision in *Hurst* has "plunge[d] the administration of the death penalty in Florida into turmoil," *Mosley v. State*, 209 So. 3d 1248, 1291 (2016) (Canady, J., concurring in part and dissenting in part).

Accordingly, the State requests that the Court grant the petition in *Hurst*, hold this petition pending its disposition of *Hurst*, and then dispose of this case accordingly.

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[2] In particular, unlike in *Hurst*, the record in this case shows that the jury did make the findings necessary to establish the existence of an aggravating circumstance. Thus, this case further illustrates one of the points made in the State's pending petition in *Hurst*—i.e., that the Florida Supreme Court has gone far beyond the holding of *Hurst v. Florida* and extended the logic of that case to effectively require jury sentencing in capital cases. It is far from clear that the logic supporting such a dramatic extension of this Court's Sixth Amendment jurisprudence may be confined to the capital context.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's disposition of the related petition for a writ of certiorari in *Florida v. Hurst*, No. 16-998, and this petition should then be disposed of as appropriate.

Respectfully submitted,

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APRIL 17, 2017