

IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

JERONE HUNTER,

Petitioner,

v.

**MICHAEL D. CREWS,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,**

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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JURISDICTION TO ENTERTAIN PETITION AND GRANT HABEAS CORPUS RELIEF

This is an original action under Florida Rule of Appellate Procedure 9.100(a). Fla. Const Art I, § 13 provides that, “The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.” This Court has original jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(3) and Fla. Const. Art V, §3(b)(1) and (9). This petition presents constitutional issues which directly concern the judgment of the Florida State courts and Mr. Hunter’s death sentence.

This Court has jurisdiction, *see, e.g., Smith v. State*, 400 So.2d 956, 960 (Fla. 1981), because the fundamental constitutional errors challenged herein arise in the context of a capital case in which this Court heard and denied Mr. Hunter’s direct appeal. *Baggett v. Wainwright*, 229 So.2d 239, 243 (Fla. 1969); *cf. Brown v. Wainwright*, 392 So.2d 1327 (Fla. 1981). This Court has plenary jurisdiction over death penalty cases. Art. V, § 3(b)(1), Fla. Const.; *Orange County v. Williams*, 702 So. 2d 1245 (Fla. 1997).

This Court has the inherent power to do justice. The ends of justice call on the Court to grant the relief sought in this case, as the Court has done in similar

cases in the past. The petition pleads claims involving fundamental constitutional error. *See Dallas v. Wainwright*, 175 So.2d 785 (Fla. 1965); *Palmes v. Wainwright*, 460 So.2d 362 (Fla. 1984). This Court's exercise of its habeas corpus jurisdiction and of its authority to correct constitutional errors is warranted in this action.

STATEMENT OF THE CASE AND FACTS

On August 27, 2004, Hunter was charged in a fourteen-count superseding indictment relating to the August 6, 2004, murders of Erin Belanger, Roberto Gonzalez, Michelle Nathan, Anthony Vega, Jonathon Gleason, and Francisco Ayo-Roman. Hunter, with codefendants Troy Victorino and Michael Salas, went to trial on July 5, 2006. Codefendant Anthony Cannon previously pled guilty as charged.

The jury returned its verdicts on July 25, 2006. It convicted Hunter of six counts of first-degree murder, three counts of abuse of a dead human body, and one count each of conspiracy to commit aggravated battery, murder, tampering with physical evidence, and armed burglary of a dwelling. The jury acquitted Hunter of the two counts of abuse of a dead human body with a weapon (postmortem cutting of throats or stabbing) and one count of cruelty to an animal.

The jury recommended a death sentence for the murder of Gleason by a vote of ten to two, a death sentence for the murder of Gonzalez by a vote of nine to three, a death sentence for the murder of Nathan by a vote of ten to two, a death sentence for the murder of Vega by a vote of nine to three, and life sentences for the murders of Belanger and Ayo-Roman.

Sentencing on the capital convictions was imposed on September 21, 2006. The trial court followed the jury's recommendations and sentenced Hunter to death for the murders of Gleason, Gonzalez, Nathan, and Vega.

This Court affirmed the judgment and sentence on direct appeal. *Hunter v. State*, 8 So.3d 1052 (Fla. 2008). A timely petition for a writ of certiorari was denied. *Hunter v. Florida*, 129 S.Ct. 2005 (April 20, 2009).

A timely Motion for Postconviction Relief was filed on April 14, 2010, pursuant to Florida Rule of Criminal Procedure 3.851. After conducting an evidentiary hearing on some of the claims contained in the motion, the court entered an order denying all claims for relief on January 25, 2012. An appeal of that decision is pending in this Court. CASE NO. SC12-246.

GROUNDS FOR RELIEF

CLAIM

FLORIDA'S DEATH PENALTY STATUTE, WHICH ALLOWS A NON-UNANIMOUS VERDICT, IS UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND VIOLATES EVOLVING STANDARDS OF DECENCY WHICH MARK THE PROGRESS OF A MATURING SOCIETY.

The Eighth Amendment has been construed by the U.S. Supreme Court to require that punishment for crimes comport with “the evolving standards of decency that mark the progress of a maturing society.” *Roper v. Simmons*, 543 U.S. 551, 561 (2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion). “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” *Trop v. Dulles*, 356 U.S. 86, 100, 78 S.Ct. 590 (1958). In assessing the evolving standards of decency, the Court has considered the laws of the various states and the entire world. *Id.* at 102-03. The Court further stated, that, “The provisions of the Constitution are not time-worn adages or hollow shibboleths. They are vital, living principles that authorize and limit governmental powers in our Nation” *Id.* at 103.

The Eighth Amendment to the Federal Constitution requires additional procedural protections in capital cases. *Beck v. Alabama*, 447 U.S. 625, 637-38,

100 S.Ct. 2382 (1980). “Death is a different kind of punishment from any other which may be imposed in this country. From the point of view of the defendant, it is different in both its severity and its finality From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.” *Gardner v. Florida*, 430 U.S. 349, 357-58, 97 S.Ct. 1197 (1977). The Eighth Amendment further requires heightened reliability in a jury’s sentencing verdict. *Caldwell v. Mississippi*, 477 U.S. 320, 330-34 (1985). A lack of juror unanimity raises an unacceptable risk that the death verdict will be unreliable within the requirements of the Eighth Amendment. Less than unanimous juries render less reliable verdicts, disregard minority points of view and feel less moral responsibility in their verdict.

Florida’s jury system in capital cases has failed to keep pace with the evolving standards of decency that mark the progress of a maturing society as demonstrated by the other State and federal death penalty statutes nationwide. Florida’s system does not comport with the Eighth Amendment’s evolving standards of decency because juries are not required to issue a unanimous death

sentence and the State still adheres to a widely criticized practice of allowing a judge to override a jury's life verdict. Florida's capital punishment statute regarding juror unanimity is an outlier that has failed to keep pace with the rest of the nation.

None of the jury's death recommendations in Mr. Hunter's case were unanimous. If Mr. Hunter had been tried in any other state but Alabama and Delaware or in federal court, Mr. Hunter would have received life sentences. Additionally Florida is the only state that allows juries to recommend a death sentence by a simple majority.

In a different context regarding a *Ring/Apprendi* challenge, this Court recognized that Fla. Stat. 921.141 has placed the Florida death penalty system on the fringes of Constitutionality. *State v. Steele*, 921 So. 2d 538, 548-550 (Fla. 2005). The court urged the Legislature to act: "[I]n light of development in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations." *Id.* at 548. However, attempts at reform have repeatedly stalled in the legislature.

Florida's jury system in capital cases has failed to keep pace with the evolving standards of decency that mark the progress of a maturing society as demonstrated by the other State and federal death penalty statutes nationwide.

Florida's system does not comport with the Eighth Amendment's evolving standards of decency because juries are not required to issue a unanimous death sentence.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Mr. Hunter respectfully urges this Honorable Court to grant habeas relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Habeas Corpus has been furnished by electronic mail to Mitchell D. Bishop, Assistant Attorney General, 444 Seabreeze Blvd. 5th FL, Daytona Beach, FL 32118 at Mitchell.Bishop@myfloridalegal.com and Cap App@myfloridalegal.com

and by U.S. Mail to Jerone Hunter DOC # V26165, Florida State Prison, 7819 NW
228th Street, Raiford, Florida 32026 on this 21st day of January, 2014.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Fla.R.App.P. 9.210, that the foregoing
was generated in Times New Roman 14-point font.

/s/ Robert T. Strain

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