IN THE SUPREME COURT OF FLORIDA

CASE NOS.: SC13-820 AND SC14-567

RONALD KNIGHT, APPELLANT

VS.

STATE OF FLORIDA, APPELLEE

RONALD KNIGHT, PETITIONER

VS.

JULIE L. JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, RESPONDENT

ON APPEAL FROM THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA, (CRIMINAL DIVISION)

ANSWER BRIEF OF APPELLEE

PAMELA JO BOINDI
Attorney General
Tallahassee, FL

Leslie T. Campbell
Assistant Attorney General
Florida Bar No.: 0066631
1515 N. Flagler Dr.; Ste. 900
West Palm Beach, FL 33401
Telephone (561) 837-5000
Facsimile (561) 837-5108
E-mail:
Leslie.Campbell@MyFloridaLegal.com
Secondary E-mail:
CapApp@MyFloridaLegal.com

Counsel for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

PRELIMINARY STATEMENT

Ronald Knight, will be referred to as "Knight" and State of Florida, will be referred to as "State". "ROA" references the direct appeal record and "PCR" the postconviction record.

STATEMENT OF THE CASE AND FACTS

The State relies on its recitation of the case and facts offered previously, and reiterates that Knight was conviction of the first-degree murder of Brendan Meehan. *Knight v. State*, 692 So.2d 903 (Fla. 4th DCA 1997) On May 8, 1997 he was indicted for first-degree murder of Richard Kunkel, armed robbery, burglary of a dwelling, and grand theft and after waiving his jury, Knight was convicted by Judge Garrison and sentenced to death.[1] (ROA.4 427-30, 434). This Court affirmed. *Knight v. State*, 770 So.2d 663, 664-65 (Fla. 2000). On April 30, 2001, certiorari was denied. *Knight v. Florida*, 121 S.Ct. 1743 (2001). Knight's postconviction appellate litigation under review presently, did not raise challenges under *Apprendi v. New Jersey*, 530 U.S. 466 (2000) or *Ring v. Arizona*, 536 U.S. 584 (2002), but he claimed his jury waivers were not knowing and voluntary.

SUMMARY OF THE ARGUMENT

Supplemental Claim I – Knight is not entitled to relief

[1] In aggravation, the court found: (1) prior violent felony (previously convicted of first-degree murder and armed robbery with a firearm); (2) in the course of a felony (armed robbery) merged with pecuniary gain; and (4) cold, calculated, and premeditated. (ROA.4 418, 420-30)

under *Hurst* as he waived his right to a jury; *Hurst* it is not retroactive under *Witt v. State*, 387 So.2d 922 (1980); there is no structural infirmity, and §775.082(2) does not apply. Furthermore, Knight has the prior violent felony and during the course of a felony aggravators which rendered him death eligible and his sentencing proper under *Almendarez-Torres v. United States*, 523 U.S. 224 (1998); *Ring v. Arizona*, 536 U.S. 584 (2002); *Alleyne v. United States*, 133 S. Ct. 2151 (2013).

SUPPLEMENTAL CLAIM I

KNIGHT WAIVED HIS RIGHT TO A JURY, THUS, *HURST* HAS NO APPLICATION HERE; MOREOVER *HURST* IS NOT RETROACTIVE AND THE PRIOR VIOLENT AND DURING THE COURSE OF A FELONY AGGRAVATORS WERE FOUND RENDERING KNIGHT ELIGIBLE FOR THE DEATH PENALTY (restated)

Although Knight acknowledges he waived his jury, he claims such was not knowing and voluntary (see initial brief and petition); and *Hurst v. Florida*, 136 S.Ct. 616 (2016) entitles him to relief. The State incorporates its argument in its postconviction and habeas pleadings showing the waivers were proper.[2] Hence, Hurst does not apply and relief should be denied.

[2] Following an evidentiary hearing, the trial court determined Knight was not credible and that evidence established Knight's waivers were knowing, intelligent, and voluntary. (ROA.3 326-27, 338, 369-70; ROA.11 369-70; PCR.16 3091-3111; PCR.17 3208-30, 3302-36) "Postconviction courts hold a superior vantage point with respect to questions of fact, evidentiary weight, and observations of the demeanor and credibility of witnesses. *See Cox v. State*, 966 So.2d 337, 357–58 (Fla. 2007)." *Lebron v. State,* 135 So.2d 1040, 1052 (Fla. 2014). *Pagan v. State*, 29 So.3d 938, 949 (Fla. 2009)(deferring to trial court' credibility

A. <u>STANDARD OF REVIEW</u> – The standard is *de novo* for purely legal claims. *Cf. Plott v. State*, 148 So. 3d 90, 93 (Fla. 2014).

B. <u>KNIGHT WAIVED HIS JURY, THUS, *HURST* IS NOT APPLICABLE</u> – Knight makes the argument that his jury waiver does not render his sentence constitutional. Stated another way, Knight suggests that even though he waived his jury in favor of a bench trial, his sentence is unconstitutional because Hurst found the statute unconstitutional.[3] "A defendant may waive the advisory jury in the penalty phase of a capital case, provided the waiver is

---

findings). *See also State v. Upton*, 658 So.2d 86, 87 (Fla. 1995) (opining "[w]hen the record contains a written waiver signed by the defendant, the waiver will be upheld")

[3] Although Hurst does not apply to Knight's case for the reasons set forth below, his claim a jury must find aggravation, and that the aggravation outweighs the mitigation and that death is the proper sentence, reads *Hurst* too broadly. Reading *Hurst* as only requiring jury factfinding as to death eligibility, but not sentence selection is consistent with prior Supreme Court cases, as well as *Kansas v. Carr*, 136 S.Ct. 633 (2016), decided a week after *Hurst*. In *Hurst*, the Court acknowledged *Apprendi*, and *Ring*, concerned factual findings necessary to make a defendant eligible for a sentence greater than that authorized by the jury's verdict. *See Alleyne v. United States*, 133 S.Ct. 2151, 2155-61 n.2 (2013) (applying *Apprendi;* "Juries must find any facts that increase either the statutory maximum or minimum because the Sixth Amendment applies where a finding of fact both alters the legally prescribed range and does so in a way that aggravates the penalty. Importantly, this is distinct from factfinding used to guide judicial discretion in selecting a punishment 'within limits fixed by law.' *Williams v. New York*, 337 U.S. 241...While such findings of fact may lead judges to select sentences that are more severe than the ones they would have selected without those facts, the Sixth Amendment does not govern that element of sentencing."); *United States v. O'Brien*, 560 U.S. 218, 224 (2010) (*Apprendi* does not apply to sentencing factors that merely guide sentencing discretion without increasing punishment range).

voluntary and intelligent." *Grim v. State*, 971 So.2d 85, 101 (Fla. 2007). Knight did so, and cannot complain that his waiver of one Sixth Amendment right resulted in a violation of another Sixth Amendment right addressed in *Hurst*. *Hurst* is based on *Apprendi* and *Ring* and this Court has held that where a defendant waives his jury, he is barred from raising a *Ring* claim. *See Wright v. State*, 19 So.3d 277, 297 (Fla. 2009). Knight has not offered a basis for applying *Hurst* to his case other than his discredited testimony challenging his waiver. This Court should find the waiver constitutionally proper and bar the claim.

C. *HURST* IS NOT RETROACTIVE – *Hurst* is based on *Apprendi* where the Supreme Court held a defendant is entitled to a jury determination of any fact designed to increase the maximum punishment allowed by a statute. In *Ring*, the Court extended *Apprendi* to capital cases. The Supreme Court stated: "Arizona's capital sentencing scheme violated *Apprendi*'s rule because the State allowed a judge to find the facts necessary to sentence a defendant to death." *Hurst*, 136 S.Ct. at 621. "Specifically, a judge could sentence [defendant] to death only after independently finding at least one aggravating circumstance." *Id*. Because it was a judge, not jury, who did fact-finding to enhance the penalty, Ring's death sentence "violated his right to have a jury find the facts behind his punishment." *Id*. The Supreme Court found a Florida jury's role was viewed as advisory

and held Florida's capital sentencing structure violated *Ring* as it required a judge to conduct factfinding necessary to enhance the sentence by alone finding "existence of an aggravating circumstance". *Hurst*, 136 S.Ct. at 620-21. In so doing, it overruled *Spaziano v. Florida,* 468 U.S. 447 (1984) and *Hildwin v. Florida*, 490 U.S. 638 (1989). *Hurst*, 136 S.Ct. at 624.

When a constitutional rule is announced, its requirements apply to those cases on direct review. *Griffith v. Kentucky*, 479 U.S. 314, 323 (1987). Once a case is final, application of a new rule of constitutional criminal procedure is limited.[4] Such new rules apply retroactively only if they fit within one of two narrow exceptions.[5] *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004). The Supreme Court determined *Ring* was not retroactive as it was a procedural, not substantive change; *Ring* only "altered the range of permissible methods for determining whether a defendant's conduct is punishable by death, requiring that a jury rather than a judge find the essential facts bearing on punishment." *Summerlin*, 542 U.S. at 349, 352-53.

> The right to jury trial is fundamental to our system of criminal procedure, and States are bound to enforce

[4] Before this Court, Knight did raise a Ring claim, hence, the instant matter should be found untimely. While *Hurst* is constitutional in nature, Knight waived his jury and *Hurst* is not retroactive and cannot revive an untimely, abandoned claim.

[5] Applicable here, a procedural rule constituting a watershed rule of criminal procedure implicating fundamental fairness and accuracy of criminal proceedings. *Teague v. Lane*, 498 U.S. 288, 310-13 (1989).

> the Sixth Amendment's guarantees as we interpret them. But it does not follow that, when a criminal defendant has had a full trial and one round of appeals in which the State faithfully applied the Constitution as we understood it at the time, he may nevertheless continue to litigate his claims indefinitely in hopes that we will one day have a change of heart. *Ring* announced a new procedural rule that does not apply retroactively to cases already final on direct review.

Summerlin, 542 U.S. at 358.[6] *Ring* did not create a new right; that right was created by the Sixth Amendment guaranteeing a jury trial.[7] *Ring* merely created a new procedural rule. Under *Teague v. Lane, 498 U.S. 288, 310-13 (1989),* a new rule generally applies only to cases on direct review. *Whorton v. Bockting*, 549 U.S. 406, 416 (2007).

Given *Ring* is not retroactive, it follows *Hurst* cannot be

[6] Florida relied in good faith upon prior decisions of this Court and the Supreme Court which upheld Florida's capital sentencing. *See Rigterink v. State*, 66 So.3d 866, 895-96 (Fla. 2011) (noting rejection of *Ring* claim in more than 50 cases). Since *Ring*, some 14 years passed without the Supreme Court accepting a case, until *Hurst*, challenging Florida's capital sentencing statute under *Ring*. While the Supreme Court ultimately expanded *Ring* to invalidate Florida's capital sentencing procedure, there were significant differences between Arizona and Florida that rendered such expansion far less than certain-inevitable. *Hurst*, 136 S.Ct. at 625 (Alito, Justice, dissenting) (observing unlike Arizona, in Florida "the jury plays a critically important role" and the Court's "decision in *Ring* did not decide whether this procedure violate[d] the Sixth Amendment").

[7] The right to a jury trial was extended to States in *Duncan v. Louisiana*, 391 U.S. 145 (1968), but Court declined to find retroactivity. *DeStefano v. Woods*, 392 U.S. 631 (1968) *Apprendi,* 530 U.S. at 494 merely extended right to the sentencing phases when an increase in possible punishment was sought, but it was not retroactive.

retroactive[8] as it is not only an expansion of *Ring* to Florida, but overruled decades old precedent (*Spaziano* and *Hildwin*) finding Florida's capital sentencing constitutional. *Hurst*, 136 S.Ct. at 623-24. Like *Ring*, *Hurst* is a new procedural rule, not dictated by *Ring* as prior Supreme Court precedent was overruled. As provided in *Bockting*, *Crawford v. Washington*, 541 U.S. 36 (2004) was a new rule because it was not "dictated" by prior precedent, but overruled *Ohio v. Roberts*, 448 U.S. 56 (1980). The announcement of a new rule, where prior precedent is overruled, runs from the date of the new case; here, from January 12, 2016 for *Hurst*. *Hurst* will not apply to any case final before January 12, 2016. Knight's case was final on April 30, 2001. *Knight*, 121 S.Ct. at 1743.

In *Johnson v. State*, 904 So.2d 400, 411-12 (Fla. 2005) this Court decided *Ring* was not retroactively under *Witt v. State*, 387 So.2d 922 (Fla. 1980)[9] specifically noting the severe and

---

[8] *Hurst* is based on an entire line of jurisprudence, none of which has been held retroactive. *See DeStefano,* 392 U.S. at 631; *McCoy v. U.S.*, 266 F.3d 1245, 1255-59 (11th Cir. 2001) (*Apprendi* not retroactive); *Varela v. U.S.*, 400 F.3d 864, 866-67 (11th Cir. 2005) (explaining decisions like *Ring*, *Blakely*, and *Booker* applying *Apprendi*'s "prototypical procedural rule" are not retroactive); *Crayton v. United States*, 799 F.3d 623, 624-25 (7th Cir. 2015) (*Alleyne v. United States*, 133 S. Ct. 2151, 2156 (2013), which extended *Apprendi* did not apply retroactively).

[9] In *Witt*, this Court explained that a new rule of constitutional procedure will not apply to final convictions unless the change: "(a) Emanates from this Court or the United States Supreme Court, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance." *Witt*, 387 So.2d at

unsettling impact retroactive application would have on our justice system with nearly 400 death sentenced inmates:

> …the three *Witt* factors, separately and together, weigh against the retroactive application of *Ring* in Florida. To apply *Ring* retroactively "would, we are convinced, destroy the stability of the law, render punishments uncertain and therefore ineffectual, and burden the judicial machinery of our state...beyond any tolerable limit." *Witt*, 387 So. 2d at 929-30. Our analysis reveals that *Ring*, although an important development in criminal procedure, is not a "jurisprudential upheaval" of "sufficient magnitude to necessitate retroactive application." *Id.* at 929. We therefore hold that *Ring* does not apply retroactively…

The Arizona Supreme Court reached the same conclusion after *Ring*. *See State v. Towery*, 204 Ariz. 386, 393-94, 64 P.3d 828, 835-36 (2003) ("[c]onducting new sentencing hearings, many requiring witnesses no longer available, would impose a substantial and unjustified burden on Arizona's administration of justice" and would be inconstant with duty to protect victims' rights under State Constitution).

Furman v. Georgia, 408 U.S. 238 (1972) and *Gideon v. Wainwright*, 373 U.S. 335 (1963) do not support Knight's call for retroactive application. *Gideon*,[10] is one of the few examples of

---

931. The opinion notes that a "development of fundamental significance" falls within two categories, either "changes of law which place beyond the authority of the state the power to regulate certain conduct or impose certain penalties" or "those changes of law which are of sufficient magnitude to necessitate retroactive application...." *Id.* at 929.

[10] Fundamental fairness is not implicated as one can envision a system of "ordered liberty" where elements of a crime are proven to a judge, not to the jury. *United States v. Shunk,* 113 F.3d

a "watershed" procedural rule under the Sixth Amendment supporting retroactive application. However, it does not mandate retroactive application for *Hurst* as both *Apprendi* and *Ring* have been determined not to be retroactive.[11] While *Falcon v. State*, 162 So.3d 954 (Fla. 2015) recognized *Miller v. Alabama*, 132 S.Ct. 2455 (2012) to be retroactive, it, like *Furman*, was addressed to the Eighth Amendment, not a Sixth Amendment procedural issue. *Falcon* and *Furman* are on a different footing

---

31, 37 (5th Cir. 1997). An example of a new "watershed" procedural rule is the right to counsel established in *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). *See Saffle v. Parks*, 494 U.S. 484, 495 (1990)(*Gideon* is retroactive; it seriously increases accuracy of conviction). Exception to nonretroactivity for procedural rules is limited to a small core of rules which seriously enhance accuracy. *Graham v. Collins*, 506 U.S. 461, 478 (1993). A trial conducted with a procedural error "may still be accurate" thus, "a trial conducted under a procedure found to be unconstitutional in a later case does not, as a general matter, have the automatic consequence of invalidating a defendant's conviction or sentence;" generally, procedural rules are not retroactive. *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

[11] In *Butterworth v. United States*, 775 F.3d 459, 467-68 (1st Cir. 2015), *cert. denied*, 135 S. Ct. 1517 (2015), the Court rejected an attempt to justify retroactive application of *Alleyne v. United States*, 133 S.Ct. 2151 (2013) based on *Apprendi* hindsight noting neither the Supreme Court, nor any other federal court, had found a new procedural rule not retroactive under the watershed exception only later to change its mind after "the law's intervening evolution." There is no reason for this Court to depart from its prior determination *Ring* is not retroactive. Such a departure would represent a clear break from precedent. *See Chandler v. Crosby*, 916 So.2d 728 (Fla. 2005) (*Witt* weighs against retroactive application of *Crawford* and noting "new rule does not present a more compelling objective that outweighs the importance of finality."); *Hughes v. State*, 901 So.2d 837, 838 (Fla. 2005) (*Apprendi* not retroactive); *State v. Statewright*, 300 So.2d 674 (Fla. 1974) (*Miranda v. Arizona*, 384 U.S. 436 (1966) not retroactive).

than *Hurst* and its procedural rule. The fact one constitutional announcement is retroactive and another is not, does not render the decision unfair, but balances fairness and finality.[12] *Johnson*, 904 So.2d at 411-12 is on point and if a new *Witt* analysis is conducted, all of the same factors apply with equal force to hold *Hurst* not retroactive. A contrary decision would be highly deleterious to finality and unsettle reasonable the expectations of citizens and victims' alike. *Hurst* does not provide for retroactive application[13] given *Teague's* reminder.[14] *Ring* is not retroactive, thus, *Hurst* is not retroactive.

Further, while Knight cites to *Arizona v. Fulminante*, 499

---

[12] As noted in *Calderon v. Thompson*, 523 U.S. 538, 556 (1998):

> A State's interests in finality are compelling when a federal court of appeals issues a mandate denying federal habeas relief.... Only with an assurance of real finality can the State execute its moral judgment in a case. Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out... To unsettle these expectations is to inflict a profound injury to the "powerful and legitimate interest in punishing the guilty,"...an interest shared by the State and the victims of crime alike.

[13] Following oral arguments in *Hurst*, the Court denied a stay of execution in *Jerry Correll v. Florida*, 2015 WL 6111441 (Oct. 29, 2015). Correll had applied for the stay based on the pending decision in *Hurst;* yet in an 8 to 1 vote the Court denied the stay. It may be assumed the Court would have granted a stay if it had intended a retroactive application of *Hurst*.

[14] "'whether a decision [announcing new rule should] be given prospective or retroactive effect should be faced at the time of [that] decision'" and a general acceptance that "...new rules generally should not be applied retroactively to cases on collateral review." *Teague*, 498 U.S. at 300-05.

U.S. 279 (1986), and *Sullivan v. Louisiana*, 508 U.S. 275 (1993), to argue the error in having a judge write a sentencing order is structural error, neither of those cases so hold and the binding precedent from both the United States Supreme Court and this Court is to the contrary. Neither *Fulminante* nor *Sullivan* concerned an error in allegedly not have a jury make findings regarding whether an element of a crime had been proven beyond a reasonable doubt. Instead, the error in *Fulminante* was the admission of a coerced confession, and the Court actually determined that such an error was subject to harmless error analysis. *Fulminante*, 499 U.S. at 306-12. In *Sullivan*, 508 U.S. at 277-82, the issue was whether the giving of a constitutionally defective instruction on reasonable doubt was structural error, which the Court found was correct. Thus, neither case addresses the issue of whether a failure to obtain a jury finding on an element is structural error.

The Court addressed and rejected the assertion whether the type of error at issue here is structural error. In *Neder v. United States*, 527 U.S. 1, 6 (1999), the trial court instructed the jury it was not to consider the issue of whether a false statement was material in determining whether a defendant was guilty of tax fraud based on having made the false statements because materiality was an issue of law to be decided by the court. While the case was on appeal, the Court determined that

the materiality of a false statement was an element of the offense to be determined by a jury. *Id.* at 6-7. The Court rejected the argument that failure to submit an element of a crime to the jury was not structural error and was subject to a harmless error analysis. *Id.* at 8-15. In doing so, it determined that allowing a harmless error analysis was not inconsistent with *Sullivan* as the failure to obtain a jury verdict on a single element did not vitiate all the jury findings like a defective reasonable doubt instruction. *Id.* at 10-11.

D. §775.082(2), FLA. STAT., IS NOT IMPLICATED – Knight suggests §775.082(2) requires he receive a life sentence given *Hurst*. *Hurst* did not find "capital punishment" unconstitutional; it only invalidated a procedure thus, by its own terms, §775.082(2) does not apply[15] and *Anderson v. State*, 267 So.2d 8 (Fla. 1972) does not support commutation of his sentence; neither does *Donaldson v. Sack*, 265 So.2d 499 (Fla. 1972). *Donaldson* is not a statutory construction case, but one of jurisdiction.[16] The focus/impact of *Donaldson* was on cases which

[15] That section provides life sentences are mandated "[i]n the event the death penalty in a capital felony is held to be unconstitutional," as enacted following *Furman*, to protect society in the event capital punishment as a whole were deemed unconstitutional. *Coker v. Georgia*, 433 U.S. 584 (1977)

[16] Based on Florida constitution in 1972, *Donaldson v. Sack*, 265 So.2d 499 (Fla. 1972) held circuit courts no longer had jurisdiction over capital cases as there was no longer a valid statute; no capital cases existed, as the definition of capital referred to those cases where capital punishment was an optional

were ***pending for prosecution*** when *Furman* issued, not pipeline cases, or those already final. This Court's determination to remand all pending death cases for life sentences was discussed in *Anderson* where it explained the Attorney General had moved to relinquish jurisdiction for resentencing. This Court did not elucidate why commutation was required, but it is interesting this predated *Teague, Witt*, and retroactivity rules.

Other differences between *Furman* and *Hurst* bode against blanket commutation; *Furman* was a decision invalidating ***all*** death sentences while *Hurst* is a specific ruling extending Sixth Amendment protections to Florida cases and remanding for harmless error. It is telling *Hurst* does not disturb *Proffitt v. Florida*, 428 U.S. 242 (1976) but overruled *Spaziano* and *Hildwin*, "to the extent they allow a sentencing judge to find an aggravating circumstance, independent of the jury's factfinding, that is necessary for imposition of the death penalty." Unlike Knight, Hurst did not have a prior or contemporaneous felony. After *Furman*, no existing capital cases remained intact, but following *Hurst*, the Supreme Court denied certiorari[17] leaving

---

penalty. *This Court* observed the new statute (§775.082(2)) was conditioned on invalidation of the death penalty, but clarified, "[t]his provision is not before us for review and we touch on it only because of its materiality in considering the entire matter." *Donaldson*, 265 So. 2d at 505.

[17] Both were supported by prior violent felony convictions. *Fletcher v. State*, 168 So.3d 186 (Fla. 2015), *cert. denied*, 2016 WL 280859 (Jan. 25, 2016); *Smith v. State*, 170 So.3d 745 (Fla.

intact the denial of Sixth Amendment error. *Hurst* provides no basis to disturb sentences so supported.

E. EVEN IF HURST WERE TO APPLY, ANY ERROR IS HARMLESS – Knight asserts *Hurst* error is structural and cannot be harmless as such requires speculation as to whether he would have waived his jury had there been a constitutional statute in place. He points to *Arizona v. Fulminante*, 499 U.S. 279 (1991); *Sullivan v. Louisiana*, 508 U.S. 275 (1993) for support. His present waiver argument is not credible; *Fulminante* and *Sullivan* do not support the claim of structural error. Hurst was in a different position from Knight as Hurst did not have a prior violent or contemporaneous felony conviction.[18] This Court has been consistent in finding deficient jury factfinding often is harmless. *Galindez v. State*, 955 So. 2d 517, 521-23 (Fla. 2007). Moreover, *Hurst* does not hold there is a constitutional right to jury sentencing. In Florida, a defendant is death eligible if at least one aggravating factor applies.[19] Knight's death

---

2015), *cert. denied*, 2016 WL 280862 (Jan. 25, 2016). In *Carr*, 136 S.Ct. at 647-49, the Court discussed the distinct factors of eligibility and selection under capital sentencing. It found an **eligibility determination was limited to findings related to aggravators**. Those of mitigation and weighing were **selection determinations**, noting such were not factual findings, but were "judgment call[s]" and "question[s] of mercy." *Id.*

[18] Hurst presented a pure *Ring* claim. *Hurst v. State*, 147 So.3d 435, 440-41, 445-47 (Fla. 2014).

[19] In Florida, eligibility is determined by the existence of at least one aggravating factor. *State v. Steele*, 921 So. 2d 538, 543 (Fla. 2005) ("[t]o obtain a death sentence, the State must

eligibility arose from his prior murder and contemporaneous robbery. Without a jury, Knight's sentence is constitutional.

This Court has upheld death sentences where a prior or contemporaneous felony exists. *Jones v. State*, 855 So.2d 611, 619 (Fla. 2003) and *Hurst's* remand permitted a harmless error analysis. Any argument a jury must find every aggravator is meritless. Had Knight opted for a jury, his prior murder rendered him death eligible. *Alleyne,* 133 S.Ct. at 2162-63. Only one aggravator is necessary to support death; finding others do not expose defendants to higher penalties. The Court has recognized this critical distinction. *Almendarez-Torres v. United States*, 523 U.S. 224 (1998); *Ring*, 536 U.S. at 598 n.4; *Alleyne*, 133 S.Ct. at 2160 n.1. *Hurst* does not disturb this.

CONCLUSION

The State requests respectfully this Court deny relief.

---

prove beyond a reasonable doubt at least one aggravating circumstance"); *Zommer v. State*, 31 So.3d 733, 754 (Fla. 2010) (*State v. Dixon*, 283 So.2d 1 (Fla. 1973), interpreted "sufficient aggravating circumstances" to mean one or more such circumstance); *Tuilaepa v. California*, 512 U.S. 967, 971-72 (1994) ("[t]o render a defendant eligible for the death penalty in a homicide case, we have indicated 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"). Presumptively, death is the appropriate sentence. *Dixon*, 283 So.2d at 9. As eligibility is a matter of state law, this Court's determination controls. *Ring*, 536 U.S. at 603. The suggestion *Hurst* requires juries find there are sufficient aggravators to outweigh mitigators is meritless. *Hurst* specifies constitutional error occurs when a judge alone finds the existence of an aggravator. *Hurst*, 136 S.Ct. at 624.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic-mail to William Hennis, Esq. at hennisw@ccsr.state.fl.us and Nicole Noel, Esq. at noeln@ccsr.state.fl.us this 12th day of March, 2016.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

_/S/ Leslie T. Campbell__
LESLIE T. CAMPBELL
Assistant Attorney General
Florida Bar No. 0066631
1515 N. Flagler Dr.; Ste. 900
Telephone: (561) 837-5000
Facsimile: (561) 837-5108
E-mail:
Leslie.Campbell@MyFloridaLegal.com
Secondary E-mail:
CapApp@MyFloridaLegal.com

COUNSEL FOR APPELLEE/RESPONDENT