

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1002

VICTOR GUZMAN,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY,  
CRIMINAL DIVISION

SUPPLEMENTAL BRIEF OF APPELLEE

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**STATEMENT OF CASE AND FACTS**

The State reiterates and incorporates its Statement of Case and Fact from the previously filed Answer Brief, with the following additions pertinent to the issue on which this Court ordered supplemental briefing.

Defendant was indicted for the first degree murder of Servina Fernandez. (V1/25-28) Defendant was convicted as charged on September 10, 2012. (V6/1013; V79/2332-33) After considering the evidence, the jury rendered its advisory sentence recommending that Defendant be sentenced to death by a vote of 7 to 5. (V8/1523; V90/3225) The trial court followed the jury's recommendation and sentenced Defendant to death. (V11/2071-80; V12/2146-47; V94/3316) In doing so, the trial court found that the State proved 4 aggravators beyond a reasonable doubt: HAC-extremely great weight; prior violent felony-great weight; committed while engaged in sexual battery-some weight; and victim was particularly vulnerable due to advanced age or disability-considerable weight. (V11/2071-80) It found no statutory mitigators, after having considered and rejected the extreme mental or emotional disturbance mitigator, and assigned little to miniscule weight to the nonstatutory mitigation. (*Id.*)

## SUMMARY OF THE ARGUMENT

Defendant is not entitled to relief under *Hurst v. Florida*, 136 S. Ct. 616 (2016). Defendant stipulated to a weighty prior violent felony aggravator. *Hurst* only requires a jury finding of a single aggravator, rendering Defendant's death sentence Constitutional. Moreover, *Hurst* does not preclude a harmless error analysis, and section 775.082(2) is inapplicable.

## ARGUMENT

### **I. DEFENDANT'S DEATH SENTENCE DOES NOT VIOLATE *HURST*.**

Latching onto language from *Hurst* regarding what findings are made in a sentencing order, Defendant first asserts *Hurst* mandates jury sentencing as it requires the jury to find not only the aggravators, but that sufficient aggravation exists and that insufficient mitigation outweighs the aggravators before a death sentence can be imposed without violating the Sixth Amendment. However, *Hurst*, 136 S. Ct. at 624, limits the infirmity to the fact that Florida's statute allowed "a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty." *Hurst* requires no more than a jury finding that a death sentence is authorized.

In *Hurst*, the United States Supreme Court acknowledged that

the holding of *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), concerned the factual findings necessary to enhance a defendant's sentence beyond that which was authorized by a jury's verdict. In *Apprendi*, 530 U.S. at 490, the Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime must be submitted to a jury and proved beyond a reasonable doubt." Two years later, in *Ring*, 536 U.S. 584, the Court addressed the implications of *Apprendi* to Arizona's capital sentencing scheme. Because Arizona's capital sentencing scheme had no jury involved in the penalty phase at all, the Court determined that Arizona's capital sentencing scheme was unconstitutional "to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty." *Id.* at 609. However, it did not alter the fact that the focus of this type of Sixth Amendment claim was findings needed to increase the maximum sentence; not facts that merely influenced the sentence selected.

While the Court has altered the portion of the holding of *Apprendi* to cover findings that increased the sentencing range to which a defendant is exposed even if they did not change the statutory maximum, it has not changed the focus from findings

that made a defendant eligible for a sentence. *Alleyne v. United States*, 133 S. Ct. 2151, 2155, 2158 (2013) (applying *Apprendi* to factual findings necessary to impose a minimum mandatory term); *Southern Union Co. v. United States*, 132 S. Ct. 2344 (2012) (applying *Apprendi* to factual findings that increased the amount of a criminal fine); *Cunningham v. California*, 549 U.S. 270 (2007) (applying *Apprendi* to factual findings necessary to increase a sentence to an "upper limit" sentence); *Blakely v. Washington*, 542 U.S. 296, 303-05 (2004) (applying *Apprendi* to factual finding necessary to impose a sentence above the "standard" sentencing range even though the sentence was below the statutory maximum). In fact, the Court recently reaffirmed that the Sixth Amendment right underlying *Ring* and *Apprendi* did not apply to factual findings made in selecting a sentence for a defendant after a finding had been made that authorized the defendant to receive a sentence within a particular range. *Alleyne*, 133 S. Ct. at 2161 n.2 ("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.'" *Id.* (quoting *Williams*

*v. New York*, 337 U.S. 241, 246 (1949)). "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." *Id.*; *United States v. O'Brien*, 560 U.S. 218, 224 (2010).

Additionally, a week after the Court issued its decision in *Hurst*, the Court issued a decision in *Kansas v. Carr*, 136 S. Ct. 633 (2016). There, the Court discussed the distinct determinations of eligibility and selection under capital sentencing scheme. In doing so, it stated that an eligibility determination was limited to findings related to aggravating circumstances and that determinations regarding whether mitigating circumstances existed and the weighing process were selection determinations. In fact, it stated that such determinations were not factual findings at all. *Id.* Instead, it termed the determinations regarding the existence of mitigating circumstances as "judgment call[s]" and weighing determinations "question[s] of mercy." *Id.*

The only facts in Florida's death penalty statute that increase the penalty to death are aggravating factors. In Florida, a sentence of death is authorized upon the finding of the existence of an aggravating factor. *Zommer v. State*, 31 So. 3d 733, 754 (Fla. 2010); *State v. Steele*, 921 So. 2d 538, 543

(Fla. 2005); *State v. Dixon*, 283 So. 2d 1, 9 (Fla. 1973). As eligibility is a matter of state law, this Court's determination controls. *Ring*, 536 U.S. at 603 (recognizing "Arizona court's construction of the State's own law is authoritative"); *Zant v. Stephens*, 462 U.S. 862, 870-73 (1983). Accordingly, the suggestion that *Hurst* requires Florida juries to find there are insufficient mitigators to outweigh the sufficient aggravators is meritless. *Carr*, 136 S. Ct. 633 (2016). Given *Carr* and the focus of *Apprendi*-based claims on sentencing eligibility, Defendant's suggestion that *Hurst* required jury findings on issues regarding mitigation and weighing should be rejected.

*Hurst* did not have a prior violent felony conviction unlike Defendant.<sup>1</sup> *Hurst* has not disturbed the recidivist exception to the Sixth Amendment findings required by *Ring* and *Apprendi*. Most notably to this case, *Ring* recognizes the distinction of enhanced sentences supported by a prior conviction. *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (permitting judge to impose higher sentence based on prior conviction); *Ring*, 536 U.S. at 598 n.4 (noting *Ring* does not challenge *Almendarez-*

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<sup>1</sup> *Hurst* was in a distinctively different position from Defendant. *Hurst* was convicted of first degree murder, and did not have a prior criminal history or a contemporaneous felony conviction. *Hurst v. State*, 147 So. 3d 435, 445-47 (Fla. 2014). Accordingly, *Hurst* presented the Court with a pure *Ring* claim. *Hurst*, 136 S. Ct. 616 (2016). In fact, even the initial merits brief filed by *Hurst* in the United States Supreme Court does not challenge the recidivist exception to *Apprendi* and *Ring*.

*Torres*, “which held that the fact of a prior conviction may be found by the judge even if it increases the statutory maximum sentence.”); see also *Alleyne*, 133 S. Ct. at 2160 n.1 (2012) (affirming *Almendarez-Torres* provides valid exception for prior conviction). Further, nothing in the *Hurst* opinion requires this Court to recede from the longstanding case law establishing the recidivist aggravator exception to *Ring*. *Middleton v. State*, 40 Fla. L. Weekly, S574 (Fla. Oct. 22, 2015); *Jackson v. State*, 180 So. 3d 938, 964 (Fla. 2015); *Hobart v. State*, 175 So. 3d 191, 203-04 (Fla. 2015). That same the logic, based on the exception for prior convictions under *Ring*, remains valid and intact in the wake of *Hurst*.<sup>2</sup> As Defendant’s recidivist aggravator falls within this exception, his *Ring* claim should be rejected.

Moreover, Defendant’s stipulation of the prior violent felony aggravator waives any right to a jury trial regarding that element. *Blakely*, 542 U.S. at 310 (holding that the state is free, under *Apprendi*, to seek judicial enhancements so long as the defendant stipulates to the relevant facts); *Apprendi*,

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<sup>2</sup> Such a reading of *Hurst* is consistent with the fact that the United States Supreme Court denied certiorari in three Florida cases where the defendants were death-eligible based on a jury finding from the guilt phase or a prior violent felony. *Hobart*, 175 So. 3d 191 (Fla. 2015), *cert. denied*, 2016 WL 1078981 (March 21, 2016); *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. 2015), *cert. denied*, 2016 WL 280862 (Jan. 25, 2016).

530 U.S. at 490 (finding facts admitted by Defendant or findings by the jury). Thus, even if the *Almendarez-Torres* prior violent felony exception did not exist, there could be no error in this case. Defendant waived any rights under *Hurst* in conceding to the existence of the prior violent felony aggravator which served as a class-eligible sentencing narrower and rendered his death sentence Constitutional under the Eighth Amendment. *Johnson v. State*, 696 So. 3d 938, 962 (Fla. 2007) ("A capital sentencing scheme passes constitutional muster if it rationally narrows the class of death-eligible defendants and permits the sentencer to consider any mitigating evidence relevant to its determination."). Given Defendant's concession at trial that this weighty aggravator was established beyond a reasonable doubt, Defendant's death sentence is constitutional.<sup>3</sup>

Even if further jury findings were required for sentencing, which they are not, any error is harmless beyond a reasonable doubt. Here, the totality of the evidence strongly supports the contemporaneous felony aggravator, the victim vulnerability and HAC aggravators found in Defendant's case. These aggravators

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<sup>3</sup> In addition to Defendant's concession, the prior violent felony aggravator was proven by certified copies of an amended information and judgment for the attempted first degree murder, lewd and lascivious battery of a minor 12 to 16 years old and aggravated battery causing great bodily harm on CC, and photos of CC that showed the bruising on her neck after Defendant's crimes. (V7/1153-54, 1155-58, 1159-64; V85/2514-16)

were based on evidence that after Defendant gained entry into the home of Ms. Fernandez, an 80-year old elderly woman, who sustained 58 stab wounds on her body, had abrasions around her neck and had been strangulated. However, there was no indication that the strangulation was necessarily sufficient to have independently caused Ms. Fernandez's death, and given the existence of the internal and external bleeding and the amount of blood throughout her home, Ms. Fernandez was alive for a while when all 58 stab wounds were inflicted on her body. Moreover, evidence supporting an attempted sexual assault included Ms. Fernandez's clothes being torn off her body with her bloodied panties found around her right ankle while she was still wearing her stockings and sandals. Matching bloodstains on her abdomen and left thigh showed that her left leg had been raised up to her body. Moreover, blood smears found on the inside of her thighs was consistent with the assailant using their bloodied hands to grab the inside of her thighs and push them apart. Also, the record contains evidence to find the victim vulnerable aggravator given that for Ms. Fernandez, walking was difficult and painful because she had flat feet and poor circulation.

Moreover, in his closing, Defendant conceded that the State proved the existence of "a certain number of aggravators that

the State presented," reminding the jury, "the aggravators, you know what they are," "you know what those ugly pictures depict" "what the crime scene photos show" and because the jury "found him guilty, [they] know what the aggravators are." (V90/3164, 3166, 3198) The lack of any substantial mitigation regarding the instant first degree murder and sexual battery on an 80-year old woman with health struggles also supports a harmless error finding. No statutory mitigators applied and with regard to the nonstatutory mitigation, the evidence submitted established that Defendant does not suffer from low intelligence or any significant mental disturbances. Under the circumstances, any one of the highly substantiated aggravators involved in this case clearly outweighed the totality of the mitigation presented, and as found by the trial court, the prior violent felony aggravator independently outweighed the mitigation.

Defendant claims that Sixth Amendment error occurred in his case and alleges that such error was necessarily structural, and not amenable to a harmless error analysis. (SIB/8) However, this claim is refuted by *Neder v. United States*, 527 U.S. 1 (1999), where the Court found no structural error occurred although the jury convicted the defendant after one element of the offense was mistakenly not submitted for the jury's consideration. Also, *Neder* explains why Defendant's reliance on *Sullivan v.*

*Louisiana*, 508 U.S. 275 (1993), is misplaced. Although *Sullivan* found that constitutional error which prevented a jury from returning a "complete verdict" could not be harmless, the Court reviewed that decision in *Neder*, and determined that reversal was not required where the evidence of the omitted element was overwhelming and uncontested. *Neder*, 527 U.S. at 19. The relevant consideration is whether, beyond a reasonable doubt, a rational jury would have rendered the same verdict. See *Galindez v. State*, 955 So. 2d 517, 522 (Fla. 2007) (framing test from *Neder* as whether it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error").

The determination that deficient factfinding under the Sixth Amendment can be harmless is cemented by *Washington v. Recuenco*, 548 U.S. 212, 215 (2006), where the Court reversed the state court holding that error under *Blakely v. Washington*, 542 U.S. 96 (2004), was structural in nature and could never be harmless. *Blakey* is an *Apprendi/Ring* decision which requires jury factfinding where a sentence is to be enhanced due to the defendant's use of a firearm. In rejecting the assertion, it found that *Neder* controlled the issue and that such errors were subject to harmless error review. *Id.* at 218-22. Consistent with this approach, this Court has held that the failure to obtain a

jury finding on an *Apprendi*-type error is subject to a harmless error analysis. *Galindez*, 955 So. 2d at 521-23; *Johnson v. State*, 994 So. 2d 960, 964-65 (Fla. 2008); *Pena v. State*, 901 So. 2d 781, 783 (Fla. 2005). Consistent with the language that *Hurst* itself uses in discussing its holding, the precedent on which *Hurst* is based and this Court's binding precedent regarding what facts must be found for a death sentence to be authorized, the actual holding in *Hurst* is properly understood as finding a Sixth Amendment violation when a judge writes a sentencing order which is not based on a jury finding of an aggravator necessary to make a defendant eligible for a death sentence. Because the trial court relied on Defendant's concession of the prior violent felony aggravator, and the other aggravating factors are supported by overwhelming evidence and essentially uncontested, any error in the judge's reliance on facts unsupported by an express jury verdict is harmless beyond a reasonable doubt.<sup>4</sup>

Finally, contrary to Defendant's suggestion, *Hurst* did not hold that the jury instructions informing the jury that their selection recommendation was advisory are unconstitutional.

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<sup>4</sup> Defendant's claim that *Neder* is inapplicable should be rejected. This case is exactly like *Neder* because the jury unanimously convicted Defendant of first degree, capital murder, and the only deficiency in factfinding relates to an omitted jury finding on an aggravator, which is comparable to *Neder*'s omitted element.

Defendant received the same instructions that Hurst's jury was given. (V90/3206-21) Because the instructions were accurate statements of the jury's role at the time of Defendant's trial, there is no violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). See *Jones v. State*, 998 So. 2d 573 (Fla. 2008); *Perez v. State*, 919 So. 2d 347 (Fla. 2005). Accordingly, this claim should be rejected.<sup>5</sup>

## **II. EIGHTH AMENDMENT DOES NOT REQUIRE UNANIMOUS JURY VERDICTS**

Defendant's suggestion that the Eighth Amendment prohibits a death sentence not based on a unanimous decision must be rejected. Initially, it must be noted that any possible constitutional error in this regard is not properly before this Court in these Supplemental Briefs. Defendant was given the opportunity to file a supplemental brief based on the alleged effects of *Hurst* to the instant case. However, Defendant does not cite *Hurst* or rely on its holding in his initial supplemental brief.<sup>6</sup> (SIB/10-12) Because this claim is not based

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<sup>5</sup> Moreover, in his closing, Defendant told the jury that its "job is to apply the facts to the law" as instructed by the trial court, that its role was to decide "whether or not to recommend that [Defendant] should be sentenced to life in prison without parole or the death penalty," reminded the jury three times that its recommendation was entitled to "great weight" and that the judge "has to rely on its decision." (V90/3159-60, 3164-65)

<sup>6</sup> Although a pretrial motion was filed in the lower court to challenge the validity of Florida's death penalty procedures under the Eighth Amendment, Defendant did not rely on *Ring* to support his claim. (V3/475-85) That motion alleged the death

on *Hurst*, it is not within the scope authorized for the filing of this brief, and should be rejected on that basis.

Moreover, even if the issue is considered, *Hurst* did not hold that the Eighth Amendment prohibits a death sentence that is not based on a unanimous jury finding under the Eighth Amendment; *Hurst* only invalidated Florida's procedures for implementation, finding that they facially could result in a Sixth Amendment violation if the judge makes factual findings which are not supported by a jury verdict. In fact, the word "unanimous" does not appear *Hurst* at all; much less does *Hurst* suggest that a jury must be unanimous in the way the jury reached its decision on such issues.<sup>7</sup> Further, as Defendant

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penalty violated the 8th Amendment based on claims of undue delays in executions, racial bias and continued arbitrary imposition of death sentences. At the end of the motion, Defendant merely stated that the motion incorporates the arguments made in furtherance of *Ring*. (*Id.*) As argued in the State's initial brief, this issue is barred. (AB/97-98)

<sup>7</sup> This is true despite the fact that *Hurst*'s main arguments before the Court were that the Sixth Amendment required jury unanimity in the manner Defendant claims. Brief of Petitioner, *Hurst v. Florida*, 136 S. Ct 616 (2016) (No. 14-7505). However, it is hardly surprising as the Court has held that the Sixth Amendment does not require unanimous jury verdicts at all, *Johnson v. Louisiana*, 406 U.S. 356 (1972); *Apodaca v. Oregon*, 406 U.S. 404 (1972), and that it would not require a jury to be unanimous about the manner in which it determined that elements were satisfied even if it did. *Schad v. Arizona*, 501 U.S. 624 (1991). As such, this Court is bound by prior cases which have expressly rejected Defendant's argument that Florida's sentencing scheme is unconstitutional under *Ring* because it does not require a unanimous jury recommendation or verdict for death. *Ault v. State*, 53 So. 3d 175, 206 (Fla. 2010); *Coday v.*

conceded in his initial merits brief, the Court has previously rejected this argument in *Proffitt v. Florida*, 428 U.S. 242 (1976). Importantly, *Hurst* did not specifically overrule *Proffitt*, 428 U.S. 428, and, only explicitly overrules *Spaziano v. Florida*, 468 U.S. 447 (1984), and *Hillwin v. Florida*, 490 U.S. 638 (1989), "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." *Hurst*, 136 S. Ct. at 623-24. Accordingly, Defendant's claim that his death sentence is unconstitutional because of a lack of unanimity is meritless. Defendant's convictions and sentences should be affirmed.

### **III. HURST DOES NOT ENTITLE DEFENDANT TO A LIFE SENTENCE**

Any capital murder committed before the enactment of the new death penalty statute may be tried under the new statute without *ex post facto* concerns under the Court's decision in *Dobbert v. Florida*, 432 U.S. 282 (1977). While Defendant asserts that he is entitled to a life sentence, *Dobbert* makes clear that such a defendant cannot claim he is automatically entitled to a life sentence because the statute in effect at the time of his first sentence was held unconstitutional. *Id.* Defendant raises the very same argument that *Dobbert*, 432 U.S. at 293-94,

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*State*, 946 So. 2d 988, 1006) (Fla. 2006); *Parker v. State*, 904 So. 2d 370, 383 (Fla. 2005).

rejected as the change in law "simply altered the methods employed in determining whether the death penalty was to be imposed." Because the new statute at issue in *Dobbert* and Chapter 2016-13 both are mere procedural changes in Florida's capital sentencing scheme, there is no *ex post facto* prohibition to application of the new statute, should resentencing be required in this case for any reason. Moreover, by its plain terms, Chapter 2016-13 is less onerous to the accused, and does not eliminate, shift or lessen the right to jury findings or the burden of proof necessary for imposition of the death sentence; it in no way alters the degree of proof necessary to impose the death sentence.

Moreover, even if Defendant is entitled to a new sentencing phase, which he is not, his initial jury recommendation would not be applicable, but would be rendered irrelevant. *Preston v. State*, 607 So. 2d 404, 407-09 (Fla. 1992) (noting a resentencing is a completely new proceeding and the judge is not bound by prior findings). There are no double jeopardy concerns present regarding resentencings that bridge the old and new penalty phase statutes. Double jeopardy only prohibits a new penalty phase when a defendant was originally acquitted of death by the sentencer. *King v. Dugger*, 555 So. 2d 355, 358-59 (Fla. 1990); *Spaziano v. State*, 433 So. 2d 508 (Fla. 1983) (affirming death

sentence imposed on remand despite jury recommendation for life). There must be an acquittal to invoke the protection of the double jeopardy clause, which here, would mean an appellate finding of that the evidence is legally insufficient to justify imposition of the death penalty. *Preston*, 607 So. 2d at 408. There was no acquittal by the sentencer at the first penalty phase because, even if the jury is elevated to the status of "sentencer," the jury recommended death under the then-controlling statute. A defendant who was originally sentenced to death can have no valid double jeopardy claim regardless of the procedural change in the statute because Defendant was not acquitted of anything.

Defendant cites to collateral estoppels as well as double jeopardy in his claim of entitlement to the jury's initial death recommendation. That theory is no more meritorious. As the United States Supreme Court has recognized, collateral estoppel is a doctrine available only to prevailing parties because any finding in favor of a losing party cannot be necessary to the judgment. *Bobby v. Bies*, 556 U.S. 825 (2009).

The cases cited by Defendant do not compel a contrary result. He relies on cases where this Court has held that a defendant is entitled to a previous life recommendation, but he never received a life recommendation. The recommendation he did

receive was sufficient to support imposition of a death sentence under the law in effect at that time. His speculation that *Preston* is no longer good law on this point because "each juror's" vote for life or death is an "ultimate fact" and therefore binding at resentencing cites no authority for support and does not make sense under the statute then or now. Accordingly, relief must be denied.

#### **IV. SECTION 775.082 DOES NOT ENTITLE DEFENDANT TO RELIEF**

Finally, Defendant's claim that section 775.082(2), Florida Statutes, mandates that he receive an immediate life sentence should be rejected. *Hurst* did not determine capital sentencing to be unconstitutional; *Hurst* only invalidated Florida's procedures for implementation, finding that they facially could result in a Sixth Amendment violation if the judge makes factual findings which are not supported by a jury verdict. Therefore, Section 775.082(2) does not apply, by its own terms.<sup>8</sup> Although Defendant suggests that this Court used similar language to require the commutation of all death sentences to life following *Furman* in *Donaldson v. Sack*, 265 So. 2d 499 (Fla. 1972), Defendant is oversimplifying *Donaldson*. *Donaldson* is not a case

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<sup>8</sup> That section provides that life sentences *without parole*<sup>8</sup> are mandated "[i]n the event the death penalty in a capital felony is held to be unconstitutional," and was enacted following *Furman v. Georgia*, 408 U.S. 238 (1972), in order to fully protect society in the event that capital punishment as a whole for capital felonies were to be deemed unconstitutional.

of statutory construction, but one of jurisdiction.<sup>9</sup> *Donaldson* observes the new statute 775.082(2) was conditioned on the invalidation of the death penalty, but clarifies, “[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. The focus and primary impact of the *Donaldson* decision was on those cases which were pending for prosecution at the time *Furman* was released. *Donaldson* does not purport to resolve issues with regard to pipeline cases pending before the Court on direct appeal, or to cases that were already final at the time *Furman* was decided. This Court’s determination to remand all pending death penalty cases for imposition of life sentences in light of *Furman* is discussed in *Anderson v. State*, 267 So. 2d 8 (Fla. 1972), a case which explains that, following *Furman*, the Attorney General filed a motion requesting that this Court relinquish jurisdiction to the respective circuit courts for resentencing to life, taking the position that the death sentences that were imposed were illegal sentences. Another difference that bodes against commutation of death sentences is

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<sup>9</sup> Based on our 1972 state constitution, which vested jurisdiction of capital cases in circuit courts rather than the criminal courts of record, *Donaldson* held that circuit courts no longer maintained jurisdiction over capital cases since there was no longer a valid capital sentencing statute to apply; no “capital” cases existed, since the definition of capital referred to those cases where capital punishment was an optional penalty.

that *Furman* was a decision that invalidated all death penalty statutes in the country; *Hurst* is a specific ruling to extend the Sixth Amendment protections first identified in *Ring* to Florida. Accordingly, no relief is warranted.

**CONCLUSION**

For the foregoing reasons, the judgment and sentence of the trial court should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **SUPPLEMENTAL BRIEF OF APPELLEE** was furnished by email to Andrew Stanton, Assistant Public Defender, appellatedefender@pdmiami.com, astanton@pdmiami.com, 1320 NW 14th Street, Miami, Florida 33125, this 1st day of April 2016.

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief is typed in Courier New 12-point font.

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