

No. SC2025-0110

EXECUTION SCHEDULED FOR FEBRUARY 13, 2025 at 6:00 PM

IN THE
Supreme Court of Florida

JAMES D. FORD,
Appellant,
v.

STATE OF FLORIDA,
Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE TWENTIETH
JUDICIAL CIRCUIT, IN AND FOR CHARLOTTE COUNTY,
FLORIDA**

Lower Tribunal No.: 081997CF0003510001XX

REPLY BRIEF OF THE APPELLANT

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PRELIMINARY STATEMENT

Appellant, James D. Ford (“Ford”), offers the following reply to the Answer Brief of Appellee (“Answer”). Ford will not reply to every issue and argument raised by the State and will only address the most salient points. Ford expressly does not abandon any issue not specifically replied to herein and relies upon his Initial Brief of the Appellant (“IB”) in reply to any argument or authority not specifically addressed.

References to the current, post-warrant record on appeal are in the form SC/ [page number].

Page references to the Initial Brief are designated with IB at [page number]. Page references to the Answer Brief are designated with AB at [page number].

All other references will be self-explanatory or otherwise explained.

GENERAL ARGUMENT IN REPLY

This Court must review these claims under the proper lens. Ford is not only sentenced to death. His death warrant has been signed, and an execution date has been set. “[E]xecution is the most irremediable and unfathomable of penalties. . . death is different.”

Ford v. Wainwright, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)). The instant case is literally a matter of life or death, because once the State has executed Ford, he will not have any recourse. Accordingly, this Court must exercise its duty to carefully review cases and prevent a manifest injustice. When post-warrant litigation calls upon this Court to correct past wrongs in circumstances where a death sentence was upheld based on the denial of constitutional rights, this Court can and should intervene.

REPLY REGARDING STAY

On page 19 of the AB, the State wrote, “The lower court properly denied Ford’s requests for a stay and an evidentiary hearing.” A stay and relinquishment of jurisdiction in these proceedings is required, so that defense expert Dr. Hyman Eisenstein has time to complete his work, and Ford has the right to present his newly discovered evidence claim regarding his diagnosis of Autism Spectrum Disorder. A stay of execution is appropriate “when there are ‘substantial grounds upon which relief might be granted.’” *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (quoting *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998)). This Court may enter a limited stay to

meaningfully consider complex legal claims even if, on first appearance, the possibility of relief appears remote. *See King v. Moore*, 824 So. 2d 127, 128 (Fla. 2002) (Harding, J., concurring) (agreeing with the issuance of a stay due to the “possibility” of merit, despite prior actions by the United States Supreme Court “seemingly send[ing] a clear message” that no relief was due). This Reply Brief is due a mere **ten days** prior to Ford’s scheduled execution, which is clearly an insufficient time period to resolve these complex issues.

REPLY TO ARGUMENT I

This Court should reject the State’s position that this issue is not properly before this Court on appeal. AB at 12-14. Approving the State’s strained efforts to deny Ford access to the appellate courts would deny Ford due process of law. This issue was properly before the state circuit court based on Ford explicitly addressing timeliness in his January 18, 2025 successive Fla. R. Crim. P. 3.851 motion. Ford explicitly addressed timelines under the section titled:

“(C) REASON CLAIMS RAISED IN PRESENT MOTION WERE NOT RAISED IN FORMER MOTION.” SC/254.

Specifically, Ford made it clear that Claim One of his successive motion was triggered by the signing of the death warrant and defense

expert Dr. Eisenstein's January 16, 2025 evaluation of Ford at the Florida State Prison ("FSP"), whereas Claim Two was not ripe until the USSC decision in *Erlinger v. United States*, 602 U.S. 821 (2024). SC/254. The circuit court rejected Ford's position by summarily denying his motion. SC/375-76. Ford is now appealing the circuit court's error, after preserving the issue below by attempting to comply with the unyielding successive requirements of Fla. R. Crim. P. 3.851(d)(2).

In the Answer at 18-19, the State also disregards Ford's right to an individualized sentencing argument by focusing on what was presented to the trial court two decades ago. Ford is now actually facing execution less than two weeks away. Newly discovered evidence from Dr. Eisenstein's evaluations provides additional compelling mitigation. A sentencer in a new penalty phase will understand Ford's case does not qualify as among the most aggravated and least mitigated.

The State understandably addressed victims' Florida constitutional rights regarding finality in addressing this issue. AB at 15-17. Ford, as a capital defendant facing the ultimate sanction of death in only ten days, also has important Florida and federal

constitutional rights, as long as he is still living. On another note, as part of his rushed post-warrant motion filings, Ford made records demands to the Florida Department of Corrections, the District 8 Medical Examiner's Officer, and the Florida Department of Law Enforcement. The State opposed Ford's access to records pertaining to whether drugs used to execute him were safe and possibly expired; he was denied access to the qualifications of his executioners, and the autopsy of executed men whose remains can speak to what suffering they encountered. SC/213-16. The State is willing to concede that Ford has the mind of a fourteen-year-old, is learning disabled, and is a sixty-five-year-old diabetic. Yet, Ford is being denied access to records that would help him develop an *as-applied* challenge based on cruel and unusual punishment. Setting that aside, Ford's post-warrant successive litigation has been both selective and rigorous, despite Fla. R. Crim. P. 3.851(d)'s unconstitutional procedural bar. This honorable Court has the authority to finally address that procedural bar in the post-warrant context. Relief is proper.

REPLY TO ARGUMENT II

The State argues that the lower court properly determined that

Ford's *Roper v. Simmons*¹ claim is untimely. AB at 20-23. The State points to the fact that evidence of Ford's mental and developmental age of fourteen was presented as mitigation during his 1999 penalty phase trial, and Ford has known about the results of trial expert Dr. Mosman's testing for 25 years. AB at 20-21. While such evidence was presented at trial, Ford's current *Roper* claim related to his mental and developmental age is timely because his active death warrant was signed on January 10, 2025. Ford's active death warrant absolutely represents a new circumstance that appropriately triggered the filing of his current *Roper* claim and renders that claim timely under the current circumstances. The possibility of Ford receiving a death warrant and actual execution date started when his death sentence was rendered in 1999. However, Ford sat on death row for **twenty-six years** without any such warrant or an actual execution date until January 10, 2025. Ford's low mental and developmental age has always been relevant as mitigation to his sentencing, and it was appropriately raised at his 1999 trial because he was facing the imminent possibility of a death sentence.

¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

However, due to the arbitrary nature by which the Florida governor signs death warrants, it has never been obvious that Ford was facing the imminent possibility of an **actual execution date**. A Florida inmate's death sentence does not automatically mean that particular inmate will be executed by the State of Florida or even receive a signed death warrant at all. Many Florida inmates have sat on death row for years after receiving their death sentence without ever receiving a signed death warrant, and they finally died due to natural causes.² A death sentence in Florida does not mean that death by execution is a forgone conclusion. Ford certainly could have lived the remainder of his natural life on death row and died of natural causes. Ford's claim that he should not be subject to **execution** due to his mental and developmental age less than age eighteen is finally fully ripe because he is now facing an actual execution and not the mere possibility. It should be noted that Ford

² A non-exhaustive list of these inmates includes: Margaret Allen, DOC #699575; Richard Lynch, DOC #E08942; Franklin Floyd, DOC #R30302; Steven Evans, DOC #330290; Guy Gamble, DOC #123096; Joseph Smith, DOC #899500; Charles Finney, DOC #516349; Donald Dufour, DOC #061222; Anthony Washington, DOC #075465; Lloyd Chase Allen, DOC #890793. Many more inmates that are still living have remained on Florida's death row for years, some even decades, without ever receiving a signed active death warrant.

is not arguing for a bright-line rule requiring that capital defendants must wait until the signing of their active death warrants before they can raise claims arguing they are ineligible for execution. The arbitrarily short timeframe set by the governor for warrants in recent years renders it nearly impossible for Florida defendants to adequately litigate any claims they raise during an active warrant. It may in practice be more convenient to raise claims related to execution prior to an active death warrant.

However, Florida capital defendants should not be procedurally barred from litigating valid execution-related claims because they wait until those claims are genuinely ripe to pursue them. It should also be noted that the arbitrary and non-transparent manner in which Florida inmates are selected for execution may deter defendants from filing successive Rule 3.851 motions once they become warrant eligible for fear that they may somehow trigger the signing of their own warrant by re-entering the courts and reminding the government of their case. Without a better understanding of why one inmate is chosen for execution from the hundreds of inmates who sit on Florida's death row, it could almost be construed as physically safer to not draw attention to one's case by avoiding litigation than to file

a pre-warrant successive motion alleging ineligibility to be executed when execution is not imminent.

The State is absolutely correct that the rules guiding successive postconviction claims are not rendered irrelevant when a death warrant is signed. AB at 22. However, the circumstances under which those rules apply are rendered significantly different enough once a warrant is signed to reconsider how those rules are applied in the post-warrant context. This difference in circumstances is at least implicitly acknowledged by the fact that Florida Rule of Criminal Procedure 3.851 includes a separate section specifically for “After Death Warrant Signed.” Fla. R. Crim. P. 3.851(h). This section acknowledges that the post-warrant context is different, for example stating that “[p]roceedings after a death warrant has been issued shall take precedence over all other cases” for the purpose of scheduling. Fla. R. Crim. P. 3.851(h)(2). However, the current procedural rules under which Ford must now litigate his final effort to preserve his life do not go far enough in acknowledging how different the post-warrant context is, and they are unconstitutional when applied to Ford in his current warrant litigation. See IB at 14-23. Ford’s *Roper* claim is timely and must be considered by this

Court.

The State further argues that the results of defense expert Dr. Hyman Eisenstein's recent evaluation of Ford do not make Ford's *Roper* claim timely, because the testing corroborates or is cumulative to the previous 1999 testing done by Dr. Mosman. AB at 22. Dr. Eisenstein's recent testing of Ford does corroborate Dr. Mosman's findings, as Dr. Eisenstein is available to opine that Ford's testing still indicates a mental and developmental age less than eighteen years old. However, Dr. Eisenstein's testing is not merely corroborating or cumulative to the 1999 evidence, because he administered different tests than Dr. Mosman testified to and also rendered a new diagnosis for Ford of Autism Spectrum Disorder. IB at 39-42. Ford's new diagnosis of Autism Spectrum Disorder qualifies as newly discovered evidence, and Ford requested in his January 30, 2025 stay motion that this Court stay his execution and relinquish jurisdiction to the lower court so that Ford could appropriately raise that newly discovered evidence claim in an amended Rule 3.851 motion.

The State further argues that *Roper v. Simmons* cannot be extended to Ford's case and points to previous cases where this Court

has rejected claims attempting to expand the scope of *Roper*. AB at 24-25.³ The State further argues that Florida courts lack the authority to extend *Roper* given the conformity clause of the Florida Constitution requiring courts to interpret the ban on cruel and unusual punishment in conformity with decisions from the United States Supreme Court. AB at 25. Ford acknowledges this Court's prior adverse precedent and also acknowledges that this Court has relied on the conformity clause to decline to extend the scope of *Roper*. See *Barwick*, 361 So. 3d 785, 794 (Fla. 2023).

However, Ford respectfully submits that this Court would not violate Florida's conformity clause by extending the scope of *Roper* to defendants whose mental and developmental age is less than age eighteen, because the reasoning for the *Roper* court's decision was not based merely on a math equation of years lived. The *Roper* court excluded juveniles from the death penalty based, at least in part, on the lesser mental and emotional functioning that often corresponds with youth, and not only because they chronologically fall below age

³ Citing *Branch v. State*, 236 So. 3d 981 (Fla. 2018); *Carroll v. State*, 114 So. 3d 883 (Fla. 2013); *Barwick v. State*, 88 So. 3d 85 (Fla. 2011); *Hill v. State*, 921 So. 2d 579 (Fla. 2006) *Sheppard v. State*, 338 So. 3d 803 (Fla. 2022).

eighteen.

The *Roper* court discussed what it considered “three general differences between juveniles under 18 and adults” that diminish the culpability of juveniles and preclude classifying them among the worst offenders subject to the death penalty. *Id.* at 569. These three differences are: (1) they have a “lack of maturity and an underdeveloped sense of responsibility” that “often result in impetuous and ill-considered actions and decisions”; (2) they are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and (3) their characters are “not as well formed” and their personalities “more transitory, less fixed” than those of adults. *Id.* at 570–71.

The *Roper* exclusion was based on an analysis of the mental, developmental, and emotional attributes of juveniles as compared to adults, not a math equation calculating their years lived. *Roper’s* reasons for the exclusion referred to juveniles’ lack of maturity, vulnerability to peer pressure, and underdeveloped characters. The *Roper* court selected the chronological age of eighteen years old as the cut-off age at which a person could be eligible for the death penalty, because “a line must be drawn,” and explained that “age of

18 is the point where society draws the line for many purposes between childhood and adulthood.” *Id.* at 574.

Further, expanding *Roper*’s categorical exclusion to defendants that are chronologically over age eighteen, but who have a lower mental and developmental age conforms with the *Roper* court’s acknowledgement that an individual’s chronological age will not always correspond with their level of functioning. The *Roper* court stated that “the qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach.” *Id.* at 574. Ford should fall under the *Roper* exclusion because his mental and developmental age was at most fourteen years old at the time of the offense for which he was convicted of. Relief is proper.

REPLY TO ARGUMENT III

Ford is not claiming that the *Erlinger v. United States*, 602 U.S. 821 (2024) decision should be applied to his case retroactively. AB at 37. Appellant stated as much in his IB at 55. What *Erlinger*, establishes, along with its reliance on *Ramos v. Louisiana*, 590 U.S. 8 (2020) is a clear reminder that Florida’s capital sentencing scheme

is unconstitutional. Florida experienced a similar expressed reminder regarding the constitutional deficiencies of its capital sentencing statute in *Ring v. Arizona*, 536 U.S. 584 (2002). In fact, Florida should have been on notice since the case which led to *Ring*, *Apprendi v. New Jersey*, 530 U.S. 466, (2000). Ford’s case was final after *Apprendi*. *Hurst v. Florida*, 136 S. Ct. 616 (2016), should have been, and should be, applied retroactively to Ford’s death sentence.

As argued in the IB, Ford’s death recommendation was based on a nonunanimous advisory panel. Ford requires a new penalty phase because his death sentence lacked unanimous jury factfinding, and he was sentenced to death based on the recommendation on a nonunanimous advisory panel. As a due process matter, denying the benefit of Florida’s post-*Hurst* capital sentencing statute to “pre-*Ring*” defendants like Appellant violates the Fourteenth Amendment because once a state requires certain sentencing procedures, it creates Fourteenth Amendment life and liberty interests in those procedures.⁴

⁴ See, e.g., *Evitts v. Lucey*, 469 U.S. 387, 393 (1985) (due process interest in state created right to direct appeal); *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) (liberty interest in state-created sentencing procedures); *Ford v. Wainwright*, 447 U.S. 399, 427-31 (1986)

This Court must be well aware of the arbitrariness of the retroactivity cutoff of *Hurst* relief, established by this Court in *Asay v. State*, 210 So.3d 1 (Fla. 2016). Appellant’s death sentence was imposed without a unanimous jury verdict for death. This Court previously held in *Hurst v. State* that there is an Eighth Amendment right to have a jury unanimously recommend a death sentence before a death sentence is permissible. *Hurst v. State*, 202 So. 3d 40, 59 (Fla. 2016). (“we conclude that juror unanimity in any recommended verdict resulting in a death sentence is required under the Eighth Amendment.”). The right to a unanimous jury recommendation of death requires full retroactivity and anything less results in an unreliable sentence which violates the Eighth Amendment.

The date of a particular death sentence’s finality on direct appeal in relation to the June 24, 2002, decision in *Ring*—and thus whether this Court has held *Hurst* retroactive based on its bright-line cutoff—has at times depended on whether there were delays in

(O’Connor, J., concurring) (liberty interest in meaningful state proceedings to adjudicate competency to be executed); *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288-89 (1998) (O’Connor, J., with Souter, Ginsburg, & Breyer, JJ., concurring) (life interest in state-created right to capital clemency proceedings).

transmitting the record on appeal to this Court for the direct appeal;⁵ whether direct appeal counsel sought extensions of time to file a brief; whether a case overlapped with this Court's summer recess; how long the assigned Justice of this Court took to submit the opinion for release;⁶ whether an extension was sought for a rehearing motion and whether such a motion was filed; whether there was a scrivener's error necessitating issuance of a corrected opinion; whether counsel chose to file a petition for a writ of certiorari in the United States Supreme Court or sought an extension to file such a petition; and how long a certiorari petition remained pending in the Supreme Court.

In one striking example, this Court affirmed Gary Bowles' and James Card's unrelated death sentences in separate opinions that

⁵ See, e.g., *Lugo v. State*, 845 So. 2d 74 (Fla. 2003) (two-year delay between the time defense counsel filed a notice of appeal and the record on appeal being transmitted to this Court, almost certainly resulting in the direct appeal being decided post-*Ring*).

⁶ Compare *Booker v. State*, 773 So. 2d 1079 (Fla. 2017) (this Court's opinion issued within one year after all briefs had been submitted, before *Ring*), with *Hall v. State*, 201 So. 3d 628 (Fla. 2016) (opinion issued twenty-three months after the last brief was submitted). If this Court had taken the same amount of time to decide *Booker* as it did *Hall*, Mr. Booker's death sentence would have become final after *Ring*.

were issued on the same day, October 11, 2001. *See Bowles v. State*, 804 So. 2d 1173 (Fla. 2001); *Card v. State*, 803 So. 2d 613, 617 (Fla. 2001). Both inmates petitioned for a writ of certiorari in the United States Supreme Court. Mr. Card’s sentence became final four (4) days after *Ring* was decided—on June 28, 2002—when his certiorari petition was denied. *Card v. Florida*, 536 U.S. 963 (2002). However, Mr. Bowles’s sentence became final seven (7) days before *Ring* was decided—on June 17, 2002—when his certiorari petition was denied. *Bowles v. Florida*, 536 U.S. 930 (2002). This Court granted *Hurst* relief to Mr. Card, ruling that *Hurst* was retroactive because his sentence became final after the *Ring* cutoff. *See Card*, 219 So. 3d at 47. However, Mr. Bowles, whose case was decided on direct appeal on *the same day* as Mr. Card’s, falls on the other side of this Court’s current retroactivity cutoff.

Other arbitrary factors affecting whether a defendant receives *Hurst* relief under this Court’s date-of-*Ring*-based retroactivity approach, include whether resentencing was based on relief granted because of an unrelated error. Under the Court’s current approach, “older” cases dating back to the 1980s with a post-*Ring* resentencing

are subject to *Hurst*, while other less “old” cases are not.⁷ Under this Court’s approach, a defendant who was originally sentenced to death before Appellant, but who was later resentenced to death after *Ring*, would receive *Hurst* relief and Appellant did not.

Additionally, the State cannot show that Appellant’s case is more aggravated and less mitigated than any post-*Ring* capital case. This Court has reversed at least twelve death sentences where the defendants also had jury recommendation(s) of 11-1.⁸ Of those twelve reversals, five defendants had multiple first-degree murder

⁷ See, e.g., *Johnson v. State*, 205 So. 3d 1285, 1285 (granting *Hurst* relief to a defendant whose crime occurred in 1981 but was granted relief on a third successive post-conviction motion in 2010, years after the *Ring* decision); *Card*, 219 So. 3d at 47 (granting *Hurst* relief to a defendant whose crime occurred in 1981 but was afforded relief on a second successive post-conviction motion in 2002—just four days after *Ring* was decided); cf. *Calloway v. State*, 210 So. 3d 1160 (Fla. 2017) (granting *Hurst* relief in a case where the crime occurred in the late 1990s, but interlocutory appeals resulted in a ten-year delay before the trial).

⁸ *Johnson v. State*, 205 So.3d 1285 (Fla. 2016); *McGirth v. State*, 209 So.3d 1146 (Fla. 2017); *Brooks v. Jones*, -- So. 3d -- 2017 WL 944235 (Fla. Mar. 10, 2017); *Jackson v. State*, 213 So.3d 754 (Fla. 2017); *Orme v. State*, 214 So.3d 1269 (Fla. 2017); *Card v. State*, 219 So.3d 47 (Fla. 2017); *Pasha v. State*, 225 So.3d 688 (Fla. 2017); *Okafor v. State*, 225 So.3d 768 (Fla. 2017); *Hall v. State*, 219 So.3d 783 (Fla. 2017); *Braddy v. State*, 219 So.3d 803 (Fla. 2017); *Bailey v. State*, 225 So.3d 776 (Fla. 2017); and *Dennis v. State*, -- So. 3d. -- 2017 WL 2888700 (Fla. July 7, 2017).

convictions. In particular, James Card's death sentence, wherein the jury also recommended death by a vote of 11-1, became final only "**four days** after the United States Supreme Court issued its opinion in *Ring*." *Card v. Jones*, 219 So. 3d 47, 48 (Fla. 2017).

The constitutional protections afforded to every capital defendant cannot be based on a roll of the dice or arbitrary line drawing. "[A]ny line drawing in the retroactive application of *Hurst* to capital defendants results in an unintended arbitrariness as to who receives relief." *Hitchcock v State*, 226 So. 3d 216 (Fla. 2017). This arbitrariness cannot withstand constitutional muster because "applying decisions of fundamental constitutional significance retroactively to defendants in similar circumstances is essential to 'ensuring fairness and uniformity in individual adjudications.'" *Asay*, 210 So.3d at 32 (Pariente dissenting).

The AB makes a point to address all the precedent contrary to Ford's position, including the fact that Ford has previously raised claims challenging his nonunanimous jury recommendation. Ford is challenging precedent, which first obviously required Ford to raise the issue in circuit court. *Erlinger*, like *Ring* in 2002 lead to *Hurst v. Florida*, is a notice that Florida's sentencing scheme is

unconstitutional. Ford addressed the unconstitutionality of the procedural bar in Argument I. Regarding the State's reliance on this Court's pre-*Erlinger* precedent, strict adherence to stare decisis would be an injustice. This Court is well experienced in overriding precedent.

This Court has been more than willing to set aside long-standing precedent to apply what this Court found was a correct standard of law. To the extent that there is case law that would seem to prevent relief, including Mr. Ford's own case, this Court should overrule such precedent. Reaching the correct application of the law has been of paramount importance this Court. It is no less important here based on the manifest injustice that Mr. Ford has suffered.

In *State v. Maisonet-Maldonado v. State*, 308 So. 3d 63 (Fla. 2020), this Court receded from cases which had held that double jeopardy principles preclude more than one conviction that is predicated on a victim's death per victim. In *Roughton v. State*, 185 So. 3d 1207 (Fla. 2016), this Court receded from precedent which had set out principles for double jeopardy analysis. In *State v. Sturdivant*, 94 So. 3d 434 (Fla. 2012), this Court receded from a

previous decision that had limited the reach of Florida’s felony-murder statute.

This Court must reconsider *State v. Poole*, 297 So. 3d 487 (Fla. 2020), where this Court “recede[d] from *Hurst v. State* except to the extent that it held that a jury must unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt. [and] reverse[d] the portion of the trial court's order setting aside Poole's sentence.” *Id.* 491. Regarding stare decisis this Court went on to state:

While this Court has consistently acknowledged the importance of *stare decisis*, it has been willing to correct its mistakes. In a recent discussion of *stare decisis*, we said:

Stare decisis provides stability to the law and to the society governed by that law. Yet *stare decisis* does not command blind allegiance to precedent. “Perpetuating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the court.”

Shepard v. State, 259 So. 3d 701, 707 (Fla. 2018) (quoting *State v. Gray*, 654 So. 2d 552, 554 (Fla. 1995)). Similarly, we have stated that “[t]he doctrine of stare decisis bends ... where there has been an error in legal analysis.” *Puryear v. State*, 810 So. 2d 901, 905 (Fla. 2002). And elsewhere we have said that we will abandon a decision that is “unsound in principle.” *Robertson v. State*, 143 So. 3d 907, 910 (Fla. 2014) (quoting *Brown v. Nagelhout*, 84 So. 3d 304, 309 (Fla. 2012)).

It is no small matter for one Court to conclude that a predecessor Court has clearly erred. The later Court must approach precedent presuming that the earlier Court faithfully and competently carried out its duty. A conclusion that the earlier Court erred must be based on a searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion. “[T]here is room for honest disagreement, even as we endeavor to find the correct answer.” *Gamble v. United States*, — U.S. —, 139 S. Ct. 1960, 1986, 204 L.Ed.2d 322 (2019) (Thomas, J., concurring).

Id. at 506. In *Bush v. State*, 295 So. 3d 179 (Fla. 2020) this Court abandoned the “circumstantial evidence rule” *Id.* at 201. “For more than one hundred years, this Court . . . applied a more stringent standard of review in reviewing convictions supported only by circumstantial evidence.” *Id.* at 216, (Labarga, J concurring in part and dissenting in part). In *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) this Court receded from *Walls v. State*, 213 So. 3d 340 (Fla. 2016). *Id.* at 1022. This Court relied on the language reproduced above from *Poole*. *Id.* 1023–24.

In *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), this Court overruled years of precedent and its own Rule of Appellate Procedure 9.142(a)(5) to hold that comparative proportionality is no longer required to be conducted by this Court. *Id.* at 549. This Court

explained that “[the] precedent is erroneous and must yield to our constitution.” *Id.* at 548. If overcoming stare decisis was correct in these cases to reach a just outcome, it should be no less available to Mr. Ford. Considering *Ramos* and *Erlinger*, whatever precedent that could be used to deny Mr. Ford’s appeal, “must yield to [the Florida Constitution]” and the United States Constitution.

CONCLUSION

Based on the foregoing arguments, Ford respectfully requests that this Court remand his case for an evidentiary hearing; vacate his sentence of death; grant a stay of execution; and/or grant any other relief it deems appropriate.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, we hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief is not subject to word count and instead complies with the page limit as it does not exceed 25 pages.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2025, I electronically filed the foregoing with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: The Honorable Lisa S. Porter, Circuit Court Judge, Twentieth Judicial Circuit, LSHarder@ca.cjis20.org; Christina Z. Pacheco, Senior Assistant Attorney General, Christina.Pacheco@myfloridalegal.com and, capapp@myfloridalegal.com; Stephen D. Ake, Senior Assistant Attorney General, stephen.ake@myfloridalegal.com; Assistant Attorney General, Jonathan S. Tannen, jonathan.tannen@myfloridalegal.com; Bianca Bentley, Assistant State Attorney, bbentley@sao20.org; Florida Supreme Court, warrant@flcourts.org; James D. Ford DOC # 763722 Union Correctional Institution P.O. Box 1000 Raiford, FL 32083.

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