IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2025-0372

EXECUTION SCHEDULED FOR APRIL 8, 2025 AT 6:00 PM

MICHAEL A. TANZI,

Petitioner,

v.

RICKY D. DIXON, Secretary,
Florida Department of Corrections,

Respondent.

REPLY BRIEF OF PETITIONER

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ARGUMENT IN REPLY

Mr. Tanzi invokes this Court's habeas jurisdiction to remedy the intolerable injustice resulting from a judge, not a jury, making the findings required to impose a death sentence on Mr. Tanzi in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

1. Mr. Tanzi's Petition is Timely and Properly Filed.

The State's argument that Mr. Tanzi's Petition is "untimely and impermissibly successive," (Resp. at 13-14), is absurd. Notwithstanding the fact that this Court's March 10, 2025, Scheduling Order explicitly permitted Mr. Tanzi to file a habeas petition in this proceeding, Florida Rule of Appellate Procedure 9.142(b) unequivocally provides for the filing of successive habeas petitions. *See* 9.142(b)(2)(D) (contents must include: "if a previous petition was filed, the reason the claim in the present petition was not raised previously"). The State's reliance on Florida Rule of Criminal Procedure 3.851(d)(3), which concerns the timing of filing habeas petitions during the initial Rule 3.851 proceeding and does not control whether additional petitions can be filed, is inapplicable here.

Likewise, the State's assertion that habeas petitions are

"reserved to challenge the effectiveness of appellate counsel," is equally unfounded and contrary to this Court's established precedent, the Florida Constitution, the Florida Rules of Appellate Procedure, and our Nation's foundational legal tradition. This Court's long-standing position that a writ of habeas corpus is the appropriate vehicle for IAC appellate counsel claims does not mean, nor has this Court ever held, that the inverse is true. The State wholly ignores the dozens of successive habeas petitions this Court has decided on the merits, filed well beyond the initial postconviction stage.[1]

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[1] *See, e.g. Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987); *Martin v. Dugger*, 515 So. 2d 185 (Fla. 1987); *Riley v. Wainwright*, 517 So. 2d 656 (Fla. 1987); *Darden v. Dugger*, 521 So. 2d 1103 (Fla. 1988); *Eutzy v. State*, 541 So. 2d 1143 (Fla. 1989); *O'Callaghan v. State*, 542 So. 2d 1324 (Fla. 1989); *Martin v. Singletary*, 599 So. 2d 121 (Fla. 1992); *Kennedy v. Singletary*, 602 So. 2d 1285 (Fla. 1992); *Mills v. Singletary*, 606 So. 2d 623 (Fla. 1992); *Johnson v. Singletary*, 612 So. 2d 575 (Fla. 1993); *Henderson v. Singletary*, 617 So. 2d 313 (Fla. 1993); *Mills v. Singletary*, 622 So. 2d 943 (Fla. 1993); *Atkins v. Singletary*, 622 So. 2d 951 (Fla. 1993); *Marek v. Singletary*, 626 So. 2d 160 (Fla. 1993); *Roberts v. Singletary*, 626 So. 2d 168 (Fla. 1993); *Lambrix v. Singletary*, 641 So. 2d 847 (Fla. 1994); *Porter v. State*, 653 So. 2d 374 (Fla. 1995); *Doyle v. Singletary*, 655 So. 2d 1120 (Fla. 1995); *White v. Singletary*, 663 So. 2d 1324 (Fla. 1995); *Jones v. Butterworth*, 691 So. 2d 481 (Fla. 1997); *McCray v. State*, 699 So. 2d 1366 (Fla. 1997); *Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999); *Glock v. Moore*, 776 So. 2d 243 (Fla. 2001); *Mills v. Moore*, 786 So. 2d 532 (Fla. 2001); *Johnston v. Moore*, 789 So. 2d 262 (Fla. 2001); *Downs v. Moore*, 801 So. 2d 906 (Fla. 2001); *King v. State*, 808 So. 2d 1237 (Fla. 2002); *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002); *King*

Enshrined in the Florida Constitution, the "Great Writ" is "to be used as a means to correct manifest injustices and its availability for use when all other remedies have been exhausted," is well established. *Baker v. State*, 878 So. 2d 1236, 1246 (Fla. 2004) (Anstead, J., concurring) (quoting *Harvard v. Singletary*, 733 So. 2d 1020 (Fla. 1999) (Overton, J., dissenting). The writ of habeas corpus is "basic to our legal heritage" as the fundamental instrument used to safeguard against illegal detention. *Id*.

Whether the State is attempting to completely erode review of constitutional error in capital cases[2] or simply did not read the

v. Moore, 831 So.2d 143 (Fla. 2002); *Diaz v. Crosby*, 869 So. 2d 538 (Fla. 2003); *Haliburton v. Crosby*, 865 So. 2d 480 (Fla. 2003); *Valle v. Crosby*, 859 So. 2d 516 (Fla. 2003); *Hertz v. Jones*, 218 So. 3d 428 (Fla. 2017); *Card v. Jones*, 219 2 So. 3d 47 (Fla. 2017); *Bailey v. Jones*, 225 So. 3d 776 (Fla. 2017); *Nelson v. Jones*, No. SC17-2034, 2018 WL 798255 (Fla. Feb. 9, 2018).

[2] Notwithstanding clearly established authority permitting capital defendants to file habeas petitions as relevant claims arise, the State has filed a variety of an "abuse of writ" challenge in every response to habeas petitions under warrant since at least 2019. This evidences an attempt to unconstitutionally suspend death-sentenced prisoners' access to the writ of habeas corpus. *See Gaskin v. Dixon, Sec'y Dept. of Corr.*, SC2023-0440, State's Response filed March 39, 2023; *Dillbeck v. State*, SC2023-220, State's Response filed February 13, 2023; *James v. State,* SC2025-281, States Response filed March 7, 2025; *Dailey v. Inch, Sec'y Dept. of Corr.*, SC2019-1797, State's Motion to Dismiss Petition for Writ of Habeas Corpus; *Long v. Inch,*

appellate rules, the Florida Constitution, or this Court's Scheduling Order, Mr. Tanzi will not waste any more of this Court's time on these arguments.

2. Mr. Tanzi's challenge is properly before this Court.

This Court has already determined that, because a judge, not a jury, made the findings of fact necessary to impose death, Mr. Tanzi's death sentence violates *Hurst v. Florida.*[3] *Tanzi v. State*, 251 So. 3d 805 (Fla. 2018). However, the Court determined that the constitutional error was harmless because Mr. Tanzi's jury voted unanimously for death. *Id.* (citing *Davis v. State*, 207 So. 3d 142 (Fla. 2016)). As Mr. Tanzi demonstrated in his Petition, *Erlinger v. United States*,[4] establishes that this Court's decision was error. This Court has the jurisdiction and authority to correct that constitutional error and remand Mr. Tanzi's case for a proceeding that comports with the Sixth Amendment.

The State's invocation of a procedural bar is premised on an incorrect interpretation that Mr. Tanzi's claim is simply a repackaged

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Sec'y Dept. of Corr., SC2019-752, State's Motion to Dismiss Petition for Writ of Habeas Corpus.

[3] 577 U.S. 92 (2016).

[4] 602 U.S. 821 (2024).

Hurst claim. (Resp. at 14). Mr. Tanzi's petition, however, arises from the latest in a series of pronouncements by the United States Supreme Court in *Erlinger* undermining this Court's understanding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and the line of Sixth Amendment cases that followed.

The State avers that this is Mr. Tanzi's third attempt at a *Ring* challenge, noting that his "claims do not get stronger with repetition." (Resp. at 14). In so arguing, the State ignores the fact that after each of Mr. Tanzi's Sixth Amendment challenges, the Supreme Court issued another opinion showing that the prior denial was wrong. Moreover, alerting this Court to Supreme Court jurisprudence establishing that he is entitled to relief is not, as the State further suggests, a mere "quibble with prior rulings" (Resp. at 15).

Mr. Tanzi is days away from an unconstitutional execution. His claims *have* only gotten stronger—yet the Court has continued to deny relief.

3. Erlinger establishes that Mr. Tanzi is entitled to jury fact finding.

The State maintains that if this Court were to "revisit" the *Hurst* error that occurred in his case, Mr. Tanzi would fail on the merits

due to *Poole*.[5] The State either misunderstands Mr. Tanzi's argument or is relying on a strawman. The Sixth Amendment error under *Erlinger* is *indeed* distinct from *Hurst*-error and establishes that *Poole* was wrongly decided.

The State's position that simply being convicted of a contemporaneous violent felony aggravator at the guilt phase makes a defendant eligible for death is irreconcilable with the Sixth Amendment, Eighth Amendment, and the Due Process Clause. (Resp. at 18-19). If true, it would gut bifurcated sentencing.

Further, *Poole* is distinguishable in that Mr. Poole was tried and found guilty by a jury; Mr. Tanzi was not. Mr. Tanzi's penalty phase jury did not make any findings as to Mr. Tanzi's guilt. The jury was not tasked with the responsibility of determining, unanimously and beyond a reasonable doubt, that he committed each charged offense. Moreover, he did not plead to conduct the State relied on in aggravation.

The State avers that the "Supreme Court has confirmed, since *Poole* was decided, that this Court's interpretation of its precedent is

[5] 297 So. 3d 487 (Fla. 2020).

correct." (Resp. 19). The State is mistaken. The Supreme Court has, in fact, not commented on Florida's capital sentencing statute since *Poole*.

The State suggests that because the Supreme Court in *McKinney* distinguished *Hurst* and *Ring* but remained silent as to *Poole*, it must approve of this Court's eroding of *Hurst v. Florida*. (Res. at 19). This leap of logic takes *McKinney* out of context. *McKinney* decided the explicitly narrow issue of whether after an appellate court can reweigh aggravating and mitigating circumstances, after determining that the jury was improperly denied the benefit of additional mitigation. 589 U.S. at 142 (emphasis added). Beyond the fact that *McKinney* is irrelevant because it is about appellate reweighing, the key distinguishing fact is that Mr. McKinney was tried and convicted in 1992, and his case became final 6 years before *Ring*. Twenty years later, the Ninth Circuit Court of Appeals determined that the trial court failed to consider relevant mitigation. *Id*. at 141.

Mr. McKinney argued that he was entitled to a new jury sentencing. *Id*. at 142. The court rejected the argument, reweighed the circumstances itself pursuant to *Clemons v. Mississippi*, 494 U.S.

738 (1990), and upheld Mr. McKinney's death sentence. 589 U.S. at 142.

The Supreme Court granted certiorari and held, "state appellate courts may conduct a *Clemons* reweighing of aggravating and mitigating circumstances, and may do so in collateral proceedings as appropriate and provided under state law." *Id.* at 147. In declining to overrule *Clemons*, the Supreme Court said, "in a capital sentencing proceeding . . . a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range." *Id.* at 145.

Unlike Mr. Tanzi, *Mr.* McKinney was not sentenced under a statute that required jury findings as to aggravation and mitigation, and he was sentenced years before *Apprendi* or *Ring*. Thus, the Supreme Court did not address the required jury fact finding under the Sixth Amendment. In contrast, *Ring* and *Hurst* determined fact finding *is* necessary when the state legislature made the existence of a fact essential to the death penalty. *Hurst*, 577 U.S. at 99 (quoting *Ring*, 536 U.S. at 592) ("Under state law, '*Ring* could not be sentenced to death, the statutory maximum penalty for first-degree murder,

unless further findings were made.'"); *Schiro v. Summerlin*, 542 U.S. 348, 354 (2004).

As Justice Scalia noted in *Summerlin*, the Supreme "Court's holding that, because Arizona has made a certain fact essential to the death penalty, that fact must be found by a jury, is not the same as this Court's making a certain fact essential to the death penalty." 542 U.S. at 354. It follows that neither *Ring* nor *Hurst* exceeded their scope by categorically mandating that a jury weigh aggravating and mitigating circumstances. Thus, the argument that *McKinney*'s holding, which concerns a completely different statute, somehow means the Supreme Court thinks *Poole* was properly decided is simply wrong.

Moreover, Mr. Tanzi did not "conspicuously omit[]" the Court's recent opinions addressing *Erlinger* under warrant. Mr. Tanzi's case is procedurally distinguishable—all of the cases this Court addressed under warrant were final prior to *Ring*, thus they were not eligible for *Hurst* relief. Mr. Tanzi's case is the only post-*Ring, Hurst*-eligible case

this Court has considered under warrant.[6]

4. The Advisory Jury's Demonstrably Improper And Unconstitutionally Constrained Factfinding Evidence The Basic Flaw Underlying This Court's Prior Sixth Amendment Analysis.

The State expresses confusion as to how the jury's consideration of Mr. Tanzi's remorsefulness is relevant. (Resp. at 15). This only highlights the State's misunderstanding of *Apprendi* and its progeny. Mr. Tanzi does not seek to relitigate his prior claims asserting this juror misconduct. Rather, he seeks to highlight why this Court must exercise its authority and grant relief.

The Framer's sought to ensure that "at all times the 'truth of every accusation' against a defendant had to be 'confirmed by the unanimous suffrage of twelve of [his] *equals and neighbours*.'" *Erlinger*, 602 U.S. at 831 (emphasis added) (quoting *Apprendi*, 530 U.S. at 477). The Sixth Amendment prohibits judges from assuming this role precisely *because* judges are *not* defendants' "equals and neighbors." *See id.* In turn, the Sixth Amendment requires a jury to find *every* fact because *any* fact can make the difference *to a jury*.

[6] James Barnes's direct appeal, SC2008-0063, became final in 2008; however, Mr. Barnes waived a jury for his penalty phase proceedings and waived postconviction proceedings under warrant.

Judges cannot express the judgment of the People in this way. Thus, this Court's harmless error analysis, discerning meaning from the jury's advisory vote for death, particularly in light of the juror's comment, is akin to reading tea leaves.

Indeed, the Supreme Court warned of that very trap in the years following *Hurst v. Florida*, commenting that finding harmless error of Sixth Amendment violations when a jury unanimously voted for death essentially "transform[ed] those advisory jury recommendations into binding findings of fact." *Reynolds v. Florida*, 586 U.S. 1004, 1012 (2018) (Sotomayor, J., dissenting from denial of cert.); *see also Guardado v. Jones*, 584 U.S. 922 (2018) (Sotomayor, J., dissenting from denial of cert). This is particularly troubling here, where a juror admitted the advisory jury considered improper aggravation that tipped the scale towards death. This fact alone suggests the jury was moved by Mr. Tanzi's mitigation and undermines the trial court's findings dismissing the impact of the mitigation. In light of *Erlinger*, the error cannot be harmless.

At the penalty phase, the jury heard little about Mr. Tanzi's troubled childhood. Trial counsel failed to present substantial and impactful mitigation. What little mitigation counsel *did* present was

incomplete. Trial counsel also presented disjointed and conflicting mental health evidence, leaving the jury without any real grasp of who Michael Tanzi is or how his life influenced how he ended up in the courtroom.

The jury heard that Mr. Tanzi suffered physical and emotional abuse from his father, which became worse at around eight years old when his father's health rapidly declined due to pancreatic cancer. On one occasion, his father took him over his knee and mercilessly beat him for disappearing outside for 45 minutes. The jury never heard that Mr. Tanzi disappeared because a teenager, five years older, took him into the woods to molest him. Mr. Tanzi returned home only to have his father beat him for being late.

The jury heard that Mr. Tanzi was repeatedly sexually molested throughout his childhood, beginning at about 8 years old, by the older teenager in his neighborhood. But the jury never heard the context or details surrounding this abuse, which would have shown the depravity of the molester and allowed the jury to appreciate Mr. Tanzi's resultant trauma. For example, the jury did not hear how the abuse escalated while Mr. Tanzi's father was on his death bed. Even trial counsel trivialized Mr. Tanzi's sexual molestation, characterizing

it as when Mr. Tanzi "started to become sexually involved with [an] older boy." (T. 1362).

The jury learned Mr. Tanzi suffered from many mental health disorders, including Bipolar Disorder,[7] from a young age. He was medicated, but ultimately, the side effects were too intense and he discontinued the medication. Mr. Tanzil was also institutionalized multiple times. He made progress with treatment, until his mother removed him from his fourth or fifth placement at about 14 years old. Mr. Tanzi never received any additional treatment.

Significantly, the State withheld evidence that Mr. Tanzi suffers from 47,XYY syndrome. (PCR-1. T. 115-6). Trial counsel never investigated, nor did the jury learn that the syndrome is a genetic defect that adversely affect Mr. Tanzi's behavior, cognitive abilities and physical condition.

The jury also heard that as a child, Mr. Tanzi developed a polysubstance addiction. By the time he was 23 years old, Mr. Tanzi abused crack cocaine, marijuana, alcohol, and ecstasy.

Notwithstanding the piecemeal and minimal mitigation

[7] There is no such thing as "Bipolar personality disorder." (Resp. at 15). Bipolar Disorder is not a personality disorder.

presented, a juror told the Miami Herald that the entire venire "spent 2 ½ hours trying to find a way not to give him the death penalty." Charles Rabin, Confessed Murderer Gets Death Sentence, Miami Herald, Apr. 12, 2003, 2003 WLNR 14865479. Ultimately, the jurors rested their decision on their belief that he "didn't care. He had no regrets, no remorse." *Id*.

The analysis is significant because the jury was instructed on 7 aggravators and 24 mitigators, but made no findings about either. Based on the juror's statement, it appears that the aggravation that drove their decision was something they were instructed not to consider. This underscores the very purpose of *Apprendi*, *Ring*, *Hurst*, and *Erlinger*.

CONCLUSION AND RELIEF SOUGHT

The errors described herein entitle Mr. Tanzi to relief. For the foregoing reasons and in the interest of justice, Mr. Tanzi respectfully urges this Court to grant habeas corpus relief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND FONT

Counsel certifies that this Petition for Habeas Corpus is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.210. Counsel further certifies that this brief contains 2,855 words.

/s/ Paul Kalil
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 28th day of March, 2025.

/s/ Paul Kalil
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