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IN THE SUPREME COURT OF FLORIDA
Tallahassee, Florida

LEONARD P. GONZALEZ, JR.	*	CASE NO.:
	*	Original Proceeding
Petitioner,	*	
	*	Lower Tribunal #: 2009CF 3249-C
v.	*	
	*	
STATE OF FLORIDA,	*	
	*	
Respondent.	*	

Petition for Writ of Prohibition; Petition for Writ of Certiorari

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On review from a final order dated 4/28/2023 [denying GONZALEZ'S motion to find the new legislative change in the criminal law [SB-450] as not applicable to this ***Hurst*** resentencing mandated by the Florida Supreme Court that was based in the unanimous verdict standard [filed on 4/21/2023] and GONZALEZ'S motion for re-hearing (filed on 5/3/2023) following the Court's written Final Order [filed on 5/19/2023] and GONZALEZ's two motions to declare the death penalty unconstitutional [filed 4/28/2023] of the Circuit Court for the First Judicial Circuit, in and for Escambia County, Florida, Hon. Coleman Lee Robinson, Circuit Court Judge, presiding.

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Key Factors

NOTE: In this petition, citations to items in the Appendix shall be designated “A” for appendix; item number from 1-16 follows with the associated page numbers, such as: [A-1, pp. 14-17].

Basis for Invoking Jurisdiction

The Supreme Court has jurisdiction of the writs sought under Article V, section 3(b)(7) in that the issue concerns the efficacy of the court ordered ***Hurst*** resentencing as well as two motions challenging the constitutionality of Section 921.141, Fla. Stat.

This Honorable Court is vested with original jurisdiction to review decisions of the 1st Circuit Court in and for Escambia County, Florida, which summarily denied (by written final order dated April 28, 2023) [A-1, pp. 1-3] petitioner's motion to determine SB 450 (the new 8-4 death law assigning amendments to Section 921.141, Fla. Stat.; dated 04/20/2023) to be inapplicable to this ***Hurst*** resentencing and petitioner's motion for re-hearing dated 05/04/2023 [A-2, pp. 4-5]; and order dated 4/28/2023 on petitioner's motion to declare section 921.141, Fla. Stat., unconstitutional for lack of jurisdictional grant of authority to the government in any of its historical documents [A-3, pp. 6-7]; and order dated 4/28/23 on petitioner's motion to declare section 921.141, Fla. Stat., unconstitutional for lack of inherent jurisdiction as the ultimate constitutional balance between *government* power and *individual rights* would be jolted out of balance by the abuse of government power [A-4, pp. 8-9]; and to issue a writ of prohibition, a writ of certiorari or a writ pursuant to the Court's all writs jurisdiction, to review final orders

[A-1, pp. 1-3]; [A-2, pp. 4-5]; [A-3, pp. 6-7]; and [A-4. pp. 8-9] from a Circuit Court on a death penalty case in which the standard for penalty phase jury verdicts has changed by legislative fiat.

The standard on review is whether the procedure employed by the trial court to deny petitioner his right to resentencing under the unanimous verdict standard that was ordered by the trial court pursuant to the Florida Supreme Court's Mandate in ***Hurst v. State*** and Gonzalez was ordered by the post-conviction court to receive ***Hurst*** **relief** (ie: unanimous jury standard), departed from the essential requirements of the law. Petitioner was convicted of the crimes charged by Indictment. The previous jury gave a split verdict of 10-2 in favor of death. This case was decided post-***Ring*** and his verdict was split. This fit the formula for necessitating a new penalty phase proceeding under the then current law requiring unanimous verdicts for death. The trial court followed the Florida Supreme Court when it vacated petitioner's death sentence and ordered a new penalty phase proceeding under the standard of unanimous verdict required for death.

Petitioner has prepared this case and litigated it for two years. Three weeks before trial the new 8-4 death bill became law when the Governor signed the bill on 4/20/2023. There is no language in the new bill that attempts to require retroactive application of this particular law. There is a legal presumption is in favor of prospective application. The change in the law was ***substantive*** and not ***procedural***,

for if it purports to be procedural, then the legislature violated the separation of powers doctrine. Therefore, the new law applies ***prospectively*** and not ***retroactively***. Should this Court determine that petitioner is entitled to a penalty phase trial under the standard of ***unanimous verdict***, the trial could begin in short order.

Petitioner filed a motion for rehearing [A-6, pp. 18-24] arguing further the distinctions of changes in the law. In this case, it was the Florida Legislature that amended Section 921.141 to implement a change in thinking on split-verdicts based upon the ***Nicholas Cruz*** case wherein the Parkland shooter who admitted murdering 17-people received a sentence of life without parole from the jury. Those who, for political reasons, favor the death penalty joined together in reaction to make subsequent defendants more apt to receive death sentences in order to somehow achieve a fair and equitable result for the otherwise aggrieved. It is prima facie unfair for the government to thumb the scales. This petitioner should not be affected by what happens in other cases, only on the facts and the law of his case.

Petitioner filed a motion [A-1`2, pp 137-146] contesting the validity of the death penalty based upon no original grant of jurisdiction in the historical documents tracing man's understanding of ***individual liberty*** from the onset of governments to present day. Nowhere in any of the documents reviewed, including the *Federalist*, is there any mention of the government possessing the authority to kill its citizens by grant of authority. Other than attempting to grant the power to itself, it doesn't

exist. The trial court summarily denied petitioner's motion without reasons or discussion. [A-3, pp. 6-7].

Petitioner also filed a motion [A-13, pp 147-159] contesting the validity of the death penalty based upon a total lack of inherent jurisdiction within government structure permitting the government to kill its citizens. This was based upon an essay deriving why *government power* must be (and remain) in complete balance with *individual rights,* which was attached to petitioner's motion in support to it [A-13, pp 150-159.

These four orders of the trial court are being presented for review here via writ of certiorari, writ of prohibition, or pursuant to all writs jurisdiction.

Statement of Facts

A. Facts of the Case:

Leonard Patrick Gonzalez, Jr., was convicted of the murders of Byrd and Melanie Billings on July 9, 2009, in their home. The underlying facts of these murders were provided in the Florida Supreme Court opinion in ***Gonzalez v. State***, 136 So.3d 1125 (Fla. 2014). After the jury verdict of guilty on all charges and the penalty phase that commenced the same day as the verdict, the jury recommended sentences of death for both murders by a vote of ten to two. The Florida Supreme Court affirmed the convictions and sentences on direct appeal.

Gonzalez filed a rule 3.851, motion for postconviction relief [A-8, pp 46-116] which was amended to include a claim for relief pursuant to ***Hurst v. Florida***, 577 U.S. 92, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and ***Hurst v. State***, 202 So.3d 40 (Fla. 2016). The postconviction court summarily denied relief on two claims but granted a new penalty phase based on Gonzalez's ***Hurst*** claim [A-7, pp 25-45]. Gonzalez appealed the denial of his two claims in ***Gonzalez v. State***, 253 So.3d 526 (Fla. 2018). The Supreme Court affirmed the denial of the two claims but did not address the ***Hurst*** resentencing. On 6/23/2021, the trial court appointed PCAC 1

On July 9, 2009, Gonzalez along with four other men [Frederick Thornton; Rakeem Florence; Donnie Stallworth; and Wayne Coldiron] invaded the Billings

home with intent to steal a safe containing $13 million. The men all wore black clothing, masks, gloves and carried firearms.

Much of the invasion was caught on the Billings surveillance system that was installed to monitor their nine children, each with various disabilities. There was no surveillance in the master bedroom where the Billings were murdered. For the ***Hurst*** re-sentencing, the convictions affirmed by the high Court stand as the starting point for this proceeding. At his first penalty phase, Gonzalez elected not to present any mitigation evidence. The law was determined to require a unanimous verdict standard pursuant to ***Hurst v. State.*** The court found three Aggravating factors: prior violent felony conviction (contemporaneous murders of the billings and the 1992 robbery conviction); committed during the course of a robbery/pecuniary gain [merged]; and HAC. The court rejected all statutory mitigators but found three mitigators given little weight. The trial court sentenced Gonzalez to death.

The convictions stand but the death sentence has been vacated in preparation for the ***Hurst*** re-sentencing. The first penalty phase was tried under the older standard of 7-5 death and received a split verdict of 10-2. The postconviction court vacated the prior sentence and set the case for ***Hurst*** re-sentencing under the unanimous verdict standard [A-7, pp 25-45].

The current posture of the case is that the petitioner has been convicted as charged in the indictment. Gonzalez's death sentence has been vacated by Court order [A-7, pp 25-45] and he is awaiting re-sentencing.

B. Procedure of the Case after Direct Appeal:

Following the direct appeal, Gonzalez filed his first Rule 3.851, Fla. R. Crim. P. (postconviction motion) [A-8, pp 46-116] raising three claims of ineffective assistance of counsel, and then amended [A-9, pp117-129] to include the claim for ***Hurst*** relief [A-8, pp 46-116]. The motion was determined on the record as the post-conviction court denied all three listed claims and granted a new penalty phase in which the standard would be unanimous jury verdict, otherwise known as ***Hurst*** relief [A-7, pp 26, 33, and 43-44]. The State conceded the issue of a ***Hurst*** resentencing at the post-conviction hearing as stated in the court's Order [A-7, pp 43-44] and the State failed to appeal.

Gonzalez filed an appeal from the denial of his claims. The Florida Supreme Court affirmed the denial of the ineffective assistance claims. It did not address the ***Hurst*** relief as granted by the court, except to acknowledge that ***Hurst*** relief was sought and granted below; it was not part of this appeal. *See* ***Gonzalez, Jr. v. State***, 253 So.3d 526 (Fla. 2018).

Then, the State filed a motion on 01/30/2020 for reconsideration [A-11, pp 133-136] and to reinstate the death verdict as obtained previously. After hearing, the trial court entered its order on 02/22/2022 [A-10, pp 130-132], denying State's motion for reconsideration under ***State v. Poole*** [A-11, pp. 130-132].

A new penalty phase and sentencing hearing was about to begin on May 15, 2023, when the new 8-4 death law became effective on April 20, 2023, just three weeks before the proceeding was set to commence. All preparations for the new penalty phase proceeding were undertaken based upon the verdict standard of unanimous jury. Just prior to commencement, the substantive law changed on jury verdict standard from unanimous to 8-4 for death. When the new law became effective, the trial court canceled the ***Hurst*** resentencing postponing continuing forward under ***Hurst*** until the issues can be resolved in the Florida Supreme Court as to what law applies to this case.

Defendant filed two motions challenging the death penalty statute as being unconstitutional for lack of historical grant of jurisdiction and inherent jurisdiction. One motion challenges that there was no original grant of jurisdiction for the government to kill its citizens [A-12, pp 137-146], and the second motion challenges there is no inherent jurisdiction for the government to kill its citizens [A-13, pp 147-159] and the trial court denied both motions [A-3, pp 6-7] and [A-4, pp 8-9].

Nature of Relief Sought

Petitioner seeks the same relief here that he sought from the trial court. This Court must recognize petitioner's right to proceed to trial in this case under the prescribed unanimous verdict standard of ***Hurst v. State***. Defendant was under the Supreme Court mandate in ***Hurst v. State*** and the trial court's order granting the ***Hurst*** relief. Defendant seeks to continue his new penalty phase proceeding under the ***Hurst*** law standard of unanimous verdict required for death, and to remand for proceedings consistent with this Court's ruling.

Additionally, the Court must declare Florida's Death Penalty Act unconstitutional for lack of jurisdictional grant permitting the government from killing its citizens and for lack of inherent jurisdiction for the government to kill its citizens. This Court should declare section 921.141, Fla. Stat., unconstitutional.

Argument and Citations

A. New 8-4 for Death law - Introduction:

SB-450, which amended Section 921.141, Fla. Stat., was passed by the Florida Legislature and signed into law by the Governor on 4/20/2023. The language of SB-450 does not indicate that the legislative intent of the bill was to be retroactive in its application.

The case at bar is a ***Hurst*** **resentencing**. That is a category of cases that previously had a split jury verdict and became final after the date of the decision in ***Ring v. Arizona***, 536 U.S. 584 (2002), which was June 24, 2002. Based upon the mandate from the Florida Supreme Court issued in ***Hurst v. State***, 202 So.3d 40 (Fla. 2016), that the Florida Constitution requires a unanimous jury verdict standard in order to qualify a particular defendant for death. Thereafter, the postconviction judge decided that the Gonzalez case required a new penalty phase under the standard of "unanimous jury verdict" [A-7, pp 25-45].

Gonzalez's previous verdict of 10-2 for death post-dated ***Ring,*** *supra*. Applying the applicable law, and based upon the State's concession at oral argument [A7, p 43], the court vacated Gonzalez's death sentence and issued a final order requiring a new penalty phase pursuant to ***Ring,*** *supra*. [A-7, pp 25-45]. This case was said to receive a "***Hurst*** **resentencing**" meaning that the new penalty phase was

to be conducted under the constitutional standard of unanimous jury verdict required to support a death sentence.

In that the trial court appointed Mr. Still (0n 6/23/2021) as lead counsel for a ***Hurst*** **resentencing** of Mr. Gonzalez, the case was prepared from the outset of opening the office files under the standard of unanimous verdict required to support death. This is essential because the new penalty phase has the same limits: Life without Parole (hereinafter referred to as LWOP) or the Death Penalty. That divide is set in stone (so to speak) or, in terms of constitutional analysis, these are the limits within which we must operate as we build our case for the Defense. These design characteristics have been built in to the Defense case from the outset and were studied and organized in this case from the start.

Petitioner plans to present at trial six expert witnesses, all in separate fields and/or specialties. Two of the six are engaged in the field of medicine (to-wit: Dr. Jeffrey Danziger, M.D. Psychiatrist who diagnosed PTSD as a major mental disorder; and Dr. Mark Rubino, M.D. Neurologist who read MRI and PET Scans of petitioner's brain and has evidence of many, many anomalies in the frontal lobes of the brain most profoundly to the left lobe having sustained thousands of blows to his head from a right-handed opponent over the years).

Two other experts are in the field of mental health, differing specialties (to-wit: James Campbell, Psy.D. diagnosed probable anatomical brain damage from

defendant's long-standing martial arts career; that he likely sustained 5,000 blows to the head; that the Defense should get MRI and PET Scan to determine analytically further); and Hyman Eisenstein, Ph.D. neuropsychologist).

The fifth expert is in the field of Pharmacology (to-wit: Daniel Buffington, Pharm. D. review and analysis of defendant's drug history at the time of the crimes (2009) and before).

Our final expert is in the field of Florida Prison Life and this is not connected with the physical deformities or mental health problems of the defendant (to-wit: Aubrey Land).

Under the law-of-the-case, a LWOP result would be obtainable by any jury's split-verdict; or by legal argument that although this case will ultimately show to be in the group of *most aggravated cases*, it will ultimately prove to be in the group of *most mitigated cases*. Therefore, Florida law would find, as a matter of law, that this case does not sufficiently narrow the number of cases to disclose the worst-of-the-worst who are eligible for the death penalty under Florida law. This means that the case needs to fit as one of the *most aggravated cases*, while it must fall within one of the *least mitigated cases*. *See* ***Knowles v. State***, 632 So.2d 62, 67 (Fla. 1993); ***Jones v. State***, 963 So.2d 180, 187 (Fla. 2007) ("We cannot conclude that this case falls in the extraordinary category of the most aggravated and least mitigated as our case law requires in order to sustain the penalty of death."); ***Kramer v. State***, 619

So.2d 274, 278 (Fla. 1993); and ***Offord v. State***, 959 S. 2d 187, 191 (Fla. 2007) (Court makes a "comprehensive analysis in order to determine whether the crime falls within the category of both the most aggravated and least mitigated of murders…").

Petitioner next discusses the law-of-the-case which requires a unanimous verdict standard; the new law is a ***substantive*** change in the law; and the trial court's ruling (that the trial be conducted under the new 8-4 for death law) causes an Equal Protection violation as amongst those ***Hurst*** **resentencing** cases which have already been tried to the unanimous jury verdict standard as opposed to those cases still to be tried.

B. The Law-of the-Case "Unanimous Standard":

This case is, generally, under mandate by the Florida Supreme Court for a ***Hurst*** **resentencing** which was (final) ordered by the trial court in a postconviction hearing in 2017 [A-7, pp 25-45]. Based upon the doctrine of stare decisis, this case must go forward under the parameters of the law which is unanimous jury verdict on the ***Hurst*** **resentencing**.

The postconviction court entered its final order on May 23, 2017 [A-7, pp 25-45]. In it the postconviction court vacated defendant's sentence of death and ordered a new penalty phase to be conducted according to ***Hurst v. Florida***, 577 U.S. 92;

136 S.Ct.616, 193 L.Ed.2d 504 (2016) and ***Hurst v. State***, *supra.* This means, without question, that the Jury's verdict standard would be unanimity for the new proceeding. From that point forward, everyone on the Defense Team prepared the case with that standard in mind; it was built into the Defense case.

The postconviction court cited ***Kopsho v. State***, 209 So.3d 568, 570 (Fla. 2017) (jury recommendation for death, 10-2; there were 3-aggravators found to be weighty, but the jury cannot be said to have found unanimously that the aggravators outweighed the mitigators). Based on this analysis, the postconviction court [A-7, p 44] Ordered and Adjudged, "Defendant's claim of entitlement to relief under ***Hurst v. State***, 202 So.3d 40 (Fla. 2016), is **GRANTED.** The Court **VACATES and SETS ASIDE** the death sentences imposed on Counts 1 and 2 on February 17, 2011, and orders a new penalty phase with regard to those counts."

In ***State v. Okafor***, 306 So.3d 930, 931 (Fla. 2020), the Florida Supreme Court said, "The State asks us to reinstate the 2015 death sentence of Bessman Okafor, which we vacated on direct appeal in 2017 under the then applicable rule of ***Hurst v. State***, 202 So.3d 40 (Fla. 2016). We partially receded from ***Hurst*** in ***State v. Poole,*** 297 So. 3d 487 (Fla. 2020), and Okafor's resentencing has yet to occur." The Gonzalez case is identical to ***Okafor***."

The Court held "that our judgment vacating Okafor's death sentence is final, that neither we nor the trial court can lawfully reinstate that sentence, and that resentencing is therefore required." [Okafor at 932]. Under ***Okafor***, petitioner is clearly entitled to have his penalty phase tried on the standard of "unanimous verdict."

In ***State v. Jackson***, 306 So.3d 936 (Fla. 2020), held:

> The issue undergirding the State's petition is whether a death sentence that was vacated by the postconviction court can be "reinstated" if the State never appealed the final order granting relief, the resentencing has not yet taken place, and this Court has since receded from the decisional law on which the sentence was vacated. *See* ***Hurst v. State***, 202 So.3d 40 (Fla. 2016), receded from in part by State v. Poole, 297 So.3d 487 (Fla. 2020). [at p. 937]

This is precisely the case at bar. The postconviction court vacated petitioner's sentence and granted ***Hurst*** relief in a new penalty proceeding. The postconviction court cited to ***Jackson*** in its order denying the State's motion for reconsideration issued on 02/22/2022 [A-10, pp 130-132].

The ***Jackson*** Court reviewed its previous decision in ***Mosely v. State***, 209 So. 3d 1248, 1283. There the court held that ***Hurst*** should be applied retroactively to defendants with split-verdicts whose sentences became final after ***Ring v. Arizona***, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Jackson sought ***Hurst*** relief in a rule 3.851 proceeding, and the postconviction court's order that "resolves all the claims raised in the motion" is expressly referred to as the *final order* for purposes of appeal. This was <u>not</u> a nonfinal order that might be appealable. The order at issue in this case is a *final order* under rule 3.851 and the statute's effect is prospective from the effective date [A-7, pp 43-44].

The case at bar is precisely the same as ***Jackson*** and ***Mosely***. There the trial court entered an order on 2/22/2022 [A-10, pp 130-132] partially granting relief on defendant's sentencing claim and denying relief as to defendant's other postconviction claims. *See* ***Taylor v. State***, 140 So.3d 526 (Fla. 2014) (the order at issue here is a *final order* under rule 3.851). The Court's order granting ***Hurst*** relief

dated 2/22/2022 was a *final order* [A-10, pp 130-132]. The State never sought re-hearing nor appealed and is now time-barred and procedurally-barred.

State v. Owen, 696 So.2d 715 (Fla. 1997) [***Owen II***], "stands for the analogous proposition that intervening decisional law cannot be used to reinstate a vacated conviction, even when the change in decisional law invalidates the very ground on which the conviction was vacated and occurs before the new trial commences." *See* ***Jackson*** quoting ***Owens II*** (at p.942).

In conclusion on this point, the ***Jackson*** Court held that "Jackson's vacated death sentences cannot be retroactively reinstated." This was the law of the case as set forth in the trial court's order dated 2/22/2022 [A-10, pp 130-132].

C. The New Law is a Substantive Change in the Law:

The Supreme Court, in ***Love v.* State**, 286 So.3d 177 (Fla. 2019), quashed the decision of the Third DCA concluding that the Fla. Stat. under review was a substantive change in the law and therefore did not apply retroactively.

The statute in question in our case, Fla. Stat. 921.141(2) (*as newly amended effective 4/20/2023*), which had required unanimous jury verdict for death now permits a recommendation of death by jury verdict of 8-4. This is a major substantive law change. The original jury returned a penalty phase verdict of death based upon a 10-2 split. This change in the law by amendment to the death penalty statute is a ***substantive*** change in the law. In this regard, the effectiveness of the new law must be ***prospective***.

Should, for some reason, the new law be thought to be procedural and ***retroactive*** back to the original sentencing, it was 10-2 for death that supported the death sentence under the law at the time but that sentence was vacated [A-7, pp 43-44]. An 8-4 standard, includes a 10-2 (former) verdict. So, "why are we having a penalty phase trial in the first place?"; a rhetorical question indeed.

Considering the new law to be retroactive, creates an abnormal result in this case. GONZALEZ previously had a 10-2 jury verdict recommending death and he was sentenced to death by the trial court. The ***Hurst v. State*** court held the jury had to find unanimously for death in order to support a death sentence. GONZALEZ was awarded a new penalty phase under ***Hurst*** meaning it was to be tried to the unanimous verdict standard. If the new law should be determined to be applied retroactively, the question is retroactive to what? Does the new law apply to the former verdict? This was already determined when the trial court vacated the death sentence and awarded a new penalty phase under ***Hurst*** [A-7, pp 43-44] and later considered and denied State's move to reinstate the death penalty [A-10, pp. 130-132].

However, the change in the law which affects this case is clearly ***substantive***. The change in the law that we are focused on was created by a newly amended statute, which was a legislative act. Only the Judiciary has the power to control

procedure. Therefore, it is a ***substantive*** change in the law and the new law must be applied prospectively.

In ***Smiley v. State***, 966 So.2d 330 (Fla. 2007), the Court reviewed the issue "Does (the new statute) apply to cases pending at the time the statute became effective. The standard of review is ***de novo*** as to whether a change in the statutory law should receive retroactive application." That is the very issue in this case. ***Smiley***, at 343, the Court Said:

> In the analysis of this certified question, the first distinction with regard to retroactive application of changes in the law is that decisional law and statutory law. In Florida, the ***Witt*** [see ***Witt v. State***, 387 So.2d 922 (Fla. 1980).
>
> [F]or a change in the law to be applied retroactively it must: (1) originate in [the Supreme Court of Florida] or the United States Supreme Court; (2) be constitutional in nature; and (3) represent a development of fundamental significance.

In ***Thompson v. State***, 887 So.2d 1260, 1263-64 (Fla. 2004), the Supreme Court held that "[T]he question of retroactivity under Witt is not applicable to this case because we are examining a change in the ***statutory*** law of this state not a change in ***decisional*** law."

Arrow Air, Inc. v. Walsh, 645 So.2d 422, 424 (Fla. 1994) (a statute that creates substantive new rights or imposing new legal burdens is a ***substantive*** change in the law.)

The legislation known as the 8-4 for death act, changed the unanimous standard for death verdicts to an 8-4 standard for death verdicts. Pursuant to ***State v. Garcia***, 229 So.2ds 236, 238 (Fla. 1969), this legislation clearly is a substantive change in the law because the standard for jury verdict is the entire case as it was judicially determined via ***Hurst v. State*** and then codified by legislation that was replaced by the new 8-4 for death law. The entire issue on penalty phase is "death" or "life without parole." Changing the verdict standard is clearly substantive as before one life juror determines the life verdict, as opposed to five life jurors now required for a life verdict. This change in the law is not remedial or procedural. Therefore, the new 8-4 for death law is clearly substantive and its application must be prospective. It would not affect this case. See ***State v. Garcia***, 229 So.2d 236, 238 (Fla. 1969). The Court held:

> As related to criminal law and procedure, substantive law is that which declares what acts are crimes and prescribes the punishment therefore, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished.

Generally, it is presumed that "in absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively." See ***Metropolitan Dade County v. Chase Federal Housing Corp.***, 737 So.2d 494, 499 (Fla. 1999). The presumption against retroactive application of

the new law may be rebutted if there is clear evidence of legislative intent to apply the statute ***retroactively***. In the case at bar, the new legislation is silent as to its intent to apply the statute retrospectively. Hence, the presumption is not rebutted here.

The Florida Constitution restricts retroactive application of criminal legislation. In Article X, section 9 states: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." ***Smiley*** at 337. See also ***Washington v. Dowling***, 109 So. 588 (1926). The new law in this case qualifies as a "criminal statute" because of its direct impact on the prosecution of the offense of "murder" in Florida. The new law here is a ***substantive*** change in the law and it has a "direct impact" on the prosecution of the charges here.

If the Court finds that the newly amended 921.141, Fla. Stat., is a purely procedural rule, then there is a violation of the separation of powers clause of the Florida Constitution, Article V, section 3(b)(1) rule-making authority. ***State v. Raymond***, 906 So.2d 1045 (Fla. 2005). Powers bestowed upon courts may not be exercised by the Legislature. *See* Art. II, section 3, Fla. Const. Matters of substantive law are within the Legislature's domain. [at 1048]

See **Griffin v. State**, 546 So.2d 91 (1DCA), the DCA (substantive law prescribes the duties and rights under our system of government). Whether the verdict standard is unanimous or 8-4 for death affects the entire proceeding; rights are involved, not procedure.

The only possible solution in this case is to continue to require a unanimous verdict for this particular case as it is the law-of-the-case. The trial court's order re-setting the ***Hurst*** **re-sentencing** [A-7, pp 43-44] means that the requirement of unanimous jury was the entire point of our case for the last two years. It is the reason for being here.

From the date of appointment as counsel for the defendant for a ***Hurst*** **resentencing** [6/23/2021], it was clear that the reason for the resentencing was that the Florida Constitution, applicable case law, and revised statute on unanimity required a unanimous verdict for death, otherwise the verdict must be rendered as LWOP. The entire structure of defendant's case was built around "unanimous verdict." Here with only 3-weeks to go before the start of trial in Pensacola, the goal posts have changed to the obvious detriment of petitioner.

D. Court's Ruling as to the effect of the New Law Causes a Violation of Equal Protection:

The majority of ***Hurst*** resentencing proceedings in cases across Florida have gone to trial under the unanimous standard, and the judgment and sentence was rendered. The classification of all cases that had a split verdict supporting their death sentence and the judgment and sentence post-dated ***Ring***, includes the GONZALEZ case. Under the ruling on the GONZALEZ motions [A-5, pp 10-17] and [A-6 pp

18-24], the Court has carved out a classification of defendants who should receive a different standard from the cases decided (within the same category) who have already been tried. Those defendants that have not had their new penalty phase trial yet are to do so with the 8-4 death law, while those defendants who have concluded their new penalty phase did so under the unanimous standard. This clearly violates Equal Protection under the Fourteenth Amendment to the Constitution.

If the trial court rules that the new law [8-4] applies to this case, such will violate defendant's due process of law and equal protection under the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

E. Court Rulings denying Defendant's motions to declare section 921.141, Fla. Stat, unconstitutional, ab initio, failed to give any reasoning or basis for its denial:

1. No Grant of Jurisdiction:

Florida has never received any legitimate grant of jurisdictional power from any source to authorize the government of Florida to execute its citizens. This creates a material breach in the structure of the Constitution and its required balance between *government power* and an *individual's rights* is at once destroyed. The government of Florida has the duty to protect every individual's rights against government over-reach [A-12, pp 137-146].

This is clear from a study of the sources discussed in the essay, [to-wit: *The Federalist*; *The Florida Constitution*; *The Spirit of the Laws*, by Charles Montesquieu; *Magna Carta*; *Lex Rex* by Rev. Samuel Rutherford; *Petition of Right*; *Declaration of Independence*; *Constitution of the United States*] that there never was any grant of jurisdiction to Florida permitting it to kill its citizens [A-12, pp 137-146].

2. No inherent Jurisdiction:

The procedures for imposition of capital punishment in Florida are set forth in §921.141, Fla. Stat. which are generated from the premise that a government does have the inherent authority to kill its citizens, which is a false premise [A-13, pp 147-159].

The government does NOT have the inherent authority to kill its citizens in accordance with *A Derivation of Constitutional Principles*, an essay written by the undersigned and incorporated by reference into the motion as an attachment [A-13, pp 147-159]. This derivation begins, as the founding fathers likely began, by drawing an equal sign on the top of your paper. On the left side, is a domain containing all of government power and to the right is a domain containing all of individual's rights. These two must be maintained in perfect balance in order for the Constitution to remain in perpetuity.

Once the need to form a government for the security and safety of citizens arises, the struggle to maintain individual liberty in the face of growing government powers becomes increasingly difficult. Within the system of checks and balances, there is none more essential than that of government power in complete balance with individual rights [A-13, pp 147-159].

If a government usurps the authority to kill its citizens via the death penalty, it usurps the ultimate authority to take away all individual rights (i.e.: free speech, religion, gun ownership, etc.), which power belongs to God alone. In doing so, the required balance between government power and an individual's rights is destroyed. Once government power is established as supreme, an individual's rights are readily extinguished. Therefore, the government does not possess inherent power to kill its citizens in order to achieve the designed balance of power [A-13, pp 147-159] .

We can postulate from this that government power will always tend to accelerate rapidly, while individuals tend to waive their rights and blame each other. Unchecked, we attain chaos. We become subjects of a king rather than citizens whose liberty interests are protected inviolate. The balance between government power and individual rights must be constantly and consistently analyzed and re-analyzed. A complete balance is essential to the functioning of the Constitution of the United States [A-13, pp 147-159].

§921.141, Fla. Stat., is unconstitutional as it attempts to grant, by statute, the

inherent right of a government to kill its citizens, whereas the government does not possess inherent jurisdiction to do so. Hence, there is no basis for the statute and it should be declared unconstitutional and void ab initio [A-13, pp 147-159].

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of May 2023, the foregoing Petition for Writ of Prohibition and/or Certiorari was E-Filed with the Clerk and simultaneously E-Served upon the below-listed parties at the e-addresses shown below:

1. The Honorable Coleman Lee Robinson
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CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that the foregoing Petition complies with the font requirements set forth in rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, in that this Petition for Writ of Prohibition is printed in Times New Roman 14-point font, has a word-count of 5,605, and is double spaced.

/s/ Ira W. Still, III

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Certificate of Petitioner

I, LEONARD PATRICK GONZALEZ, JR., the petitioner herein certify that I have read this Petition and discussed its issues for the Petition, the Appendix and a motion for stay. I understand and agree with the petition and Appendix, and the motion to stay and authorize my lawyer to do this work on my behalf as evidenced by my signature below.

Dated: 5/23/2023 **/S/** Leonard Patrick Gonzalez, Jr.