NO. 14-7505

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY LEE HURST,

Petitioner,

v.

STATE OF FLORIDA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(restated)

SHOULD THIS COURT REVIEW THE FLORIDA SUPREME COURT'S DECISION HOLDING THAT A DEFENDANT, IN THE PENALTY PHASE OF A CAPITAL CASE, HAS NO RIGHT TO A JURY DETERMINATION OF WHETHER HE IS INTELLECTUALLY DISABLED?

SHOULD THIS COURT REVIEW THE FLORIDA SUPREME COURT'S DECISION THAT *RING V. ARIZONA*, 536 U.S. 584 (2002), HAS NO APPLICATION TO FLORIDA'S CAPITAL SENTENCING STATUTE WHEN THE JURY FOUND, BEYOND A REASONABLE DOUBT, PETITIONER GUILTY OF A DEATH PENALTY QUALIFYING AGGRAVATING CIRCUMSTANCE, AND THE JURY RECOMMENDED DEATH?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

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OPINION BELOW

Petitioner Timothy Lee Hurst seeks a writ of certiorari from the May 1, 2014 opinion of the Florida Supreme Court affirming his conviction and sentence of death. The opinion is reported at *Hurst v. State*, 147 So.3d 435 (Fla. 2014) (attached as "Appendix A" to Hurst 's Petition for Writ of Certiorari).

JURISDICTION

This Petition seeks review of a decision from the Florida Supreme Court, and therefore jurisdiction is conferred pursuant to 28 U.S.C. § 1257 (2014).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 2, 1998, the body of murder-victim Cynthia Lee Harrison, a manager at a Popeye's Fried Chicken restaurant in Escambia County, was found in the freezer

at her place of employment. She had been bound, gagged, and stabbed multiple times. *Hurst v. State,* 147 So.3d 435, 437 (Fla. 2014).

On May 26, 1998, Petitioner Timothy Lee Hurst, a fellow employee at Popeye's, was indicted for First Degree Pre-Meditated Murder/Felony Murder with a Weapon of Ms. Harrison. (R [SC00-1042]/I 1-2)

On March 23, 2000, a jury found Petitioner Hurst guilty as charged of First Degree Murder. (R [SC00-1042]/III 448) The jury recommended the death sentence by 11-1 vote. (R [SC00-1042]/III 450)

On April 26, 2000, the trial court sentenced Hurst to death. (R [SC00-1042]/III 469-489)

Following a direct appeal to the Florida Supreme Court, a post-conviction evidentiary hearing before the trial court, and an appeal on the post-conviction hearing before the Florida Supreme Court, the case was remanded to the trial court for a new jury penalty phase. *Hurst* at 439-40.

Before the second penalty phase, Hurst filed a Motion to Declare Defendant's Mental Retardation as a Bar to Execution and Request for Hearing which the trial court denied. (R [S12-1947]/II 309-17) Thereafter, in March, 2012, a second jury penalty phase occurred. The defense argued to the jury that Hurst was intellectually disabled[1] and that he had brain damage. (R [SC12-1042]/VI 240-41)

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[1] Although the opinion refers to "mentally retarded," this Brief in Opposition refers to the identical condition as "intellectually disabled" in light of this Court's ruling in *Hall v. Florida,* 134

In support of his tendered defenses, Hurst put on several lay witnesses and two mental health experts to demonstrate that he was intellectually disabled.

Dr. Krop, a psychologist, testified for Hurst. He told the jury that in January 2012, he saw Hurst for the first time and administered the WAIS-IV and the TOMM. (R [S12-1947]/ VIII 627-28) Krop said that Hurst "put forth good effort," "seemed to have good concentration," and was "attentive." (R [S12-1947]/VIII 632) Krop's 2012 testing resulted in a full-scale IQ score of 69, which Krop said "is in the category of mental retardation." (R [S12-1947]/VIII 632)

Krop said that Hurst's grade point average was 1.2, which is a "D" average, that Hurst repeated 10th grade, and that Hurst did not complete his degree or certificate. (R [S12-1947]/VIII 637-38)

Krop summarized:

> He was low average on most of the neuropsychological testing. But there was also some of the testing which suggested either borderline or mild impairment.
>
> I noticed in reviewing one of the previous psychologist's evaluation, and it was not a full neuropsychological testing, but there were certain neuropsychological tests, particularly one that measures executive functions or what we call frontal lobe functions that showed mild impairment. That was one of the other things that triggered what I thought was important, to take a look at a more comprehensive neuropsychological battery.

(R [S12-1947]/VIII 639)

S.Ct. 1986 (U.S. 2014) and Fla. Stat. § 921.137 (2014).

Krop concluded that Hurst meets the criteria for intellectual disability (R [S12-1947]/VIII 636, 640) and said that he "did not see any other diagnosable psychiatric disorder." (R [S12-1947]/VIII 646)

Krop acknowledged that earlier IQ tests, administrered before the first penalty phase, scored at around 77 or 78 on an earlier version of the WAIS, which he said was not as accurate as the WAIS-IV. (R [S12-1947]/VIII 649-50, 652-53)

Dr. Taub, a psychologist at the University of Central Florida, also testified for Hurst. (R [S12-1947]/VIII 655) He concluded that Hurst's IQ score of 69 was in the intellectually disabled range. (R [S12-1947]/VIII 680, 716) On cross-examination, Taub admitted that he had not been provided with Dr. Riebsame's data (the first doctor to administer the test to Hurst prior to the first penalty phase). (R [S12-1947]/VIII 718) On cross-examination, Taub was questioned about Hurst's mental capacity to take money and hide it at someone else's house (R [S12-1947]/VIII 723-25), Hurst knowing to take his pants, which had blood on them, to another person's house for washing (R [S12-1947]/VIII 725), Hurst directing that evidence be disposed of (R [S12-1947]/VIII 725), Hurst having a driver's license (R [S12-1947]/VIII 726), Hurst having a job and being able to be a cashier as long as it is repetitive. (R [S12-1947]/ VIII 726-27) Dr. Taub conceded that it required a "little bit higher level" of thinking to direct another to dispose of evidence of a crime. R [S12-1947]/VIII 725)

The defense rested without Hurst testifying. (R [S12-1947]/VIII 730)

In rebuttal, the State called psychologist Dr. Harry McClaren as a witness. (R [S12-1947]/VIII 731) McClaren reviewed various aspects of the record, reviewed the reports and data of Dr. McClain and Dr. Larson, reviewed D.O.C.'s mental health records, and reviewed the depositions of Dr. Taub and Dr. Krop and listened to their testimony as well as Hurst's lay witnesses. (R [S12-1947]/VIII 734-35) He also read a transcript of, and listened to, an audiotape of Hurst's statement to the police. (R [S12-1947]/VIII 735) He reviewed Hurst's school records. (R [S12-1947]/VIII 737)

McClaren testified concerning Hurst malingering and the WAIS. (R [S12-1947]/ VIII 735-36)

He concluded that Hurst, although below average in intellect, did not meet Florida's definition of intellectual disability. (R [S12-1947]/VIII 737- 39) He explained that, in terms of the ability to measure intellect, the WAIS-III and WAIS-IV are very highly correlated with each other. (R [S12-1947]/VIII 741 - 42) He explained that Hurst, in 2003 and 2004, was able to score a 76 on Dr. Riebsame's IQ test, which was the first administration, and he also scored a 78 in separate IQ-testing. (R [S12-1947]/VIII 741) He "wonder[ed] if there was other factors at work that would make" Hurst's scores "go down so much" from 78 to 69 (R [S12-1947]/VIII 742).

Dr. McClaren pointed to Hurst's performance on the California Achievement Test "showing much better achievement that would be expected of someone of an I.Q. of 70 or below." (R [S12-1947]/VIII 743)

Investigator Nesmith was also called in rebuttal. He authenticated a tape recording of Hurst's statement in his interview of Hurst. (R [S12-1947]/VIII 746-47) The tape was played for the jury. (R [S12-1947]/VIII 748-64) The interview revealed Hurst's ability to recount the morning's events; to recall phone numbers; to provide directions; and to lie to conceal his involvement in the murder. (R [S12-1947]/VIII 750-55)

After the Judge's colloquy of Hurst (VIII 771-72), the attorneys' closing arguments (R [S12-1947]/IX 783-823), and the Judge's jury instructions (R [S12-1947]/IX 823-40), the jury voted 7 to 5 to recommend the death sentence (R [S12-1947]/IX 848-51; III 463).

On August 16, 2012, the Honorable Linda Nobles sentenced Hurst to death. (R [S12-1947]/III 556-86) The Judge's Sentencing Order reviewed aspects of the facts and law, then found as aggravators HAC and during-the-commission-of-a-robbery (R [S12-1947]/III 575 - 79), affording them each great weight. The trial court rejected each proposed statutory mitigator except for no-significant-prior-criminal-history and Hurst's age at the time of the murder, which the trial court afforded moderate weight. (R [S12-1947]/ III 579-83) The trial court gave moderate weight to the nonstatutory mitigator of a limited intellectual capacity. (R [S12-1947]/III 583-85)

The trial court specifically found that Hurst was not intellectually disabled. *Hurst* at 440. In making that finding, the trial court relied on the testimony and evidence presented at trial, including: Hurst was able to maintain a job; he had a

driver's license; he made statements to the police in an attempt to conceal his involvement in the murder; during his statement to police, he was able to recount the morning's events, give directions, recall telephone numbers, and deliberately omit incriminating information; he attempted to clean up the murder scene; washed his clothes; hid the money in an another location; discarded Ms. Harrison's belongings and his shoes; and he bought new shoes. (R [S12-1947]/III 571)

Hurst appealed to the Florida Supreme Court, raising three issues. First, that the trial court erred in refusing to give him a separate evidentiary hearing on his successive intellectual disability claim. The Florida Supreme Court rejected this argument finding that the trial court had not abused its discretion in denying Hurst a second evidentiary hearing because he had previously presented such evidence at his first evidentiary hearing and was not found to be intellectually disabled. The Supreme Court further noted that any error in denying the evidentiary hearing was harmless because Hurst was permitted to present all of his intellectual disability evidence at the penalty phase, after which the trial court ruled that he failed to establish that he was intellectually disabled. *Hurst* at 441-42.

Second, Hurst argued that the Florida Supreme Court should have receded from precedent holding that the jury need not expressly find specific aggravators or issue a unanimous advisory verdict on the sentence. Hurst argued that the facts of his case support the conclusion that *Ring* applies to require the jury to expressly find one or more aggravators and to issue its recommendation based on a unanimous advisory verdict because his case did not involve a conviction of a prior

violent felony or that the murder was committed in the course of a felony. *Id.* at 446. The Florida Supreme Court, in relying on state precedent, as well as *Evans v. Sec'y, Fla Dep't of Corr.*, 669 F.3d 1249 (11th Cir. 2012), *cert denied*, rejected Hurst's claim, finding that the Florida sentencing procedures do not provide for jury input about the existence of aggravating factors prior to sentencing. *Id.* at 447.

Third, Hurst argued that his death sentence was not proportionate in light of the abnormalities in his brain due to fetal alcohol syndrome, his low mental functioning and other mental and background mitigation. *Id.* The Florida Supreme Court conducted its proportionality review and found that Hurst's death sentence was proportionate when compared to the death sentences in other comparable capital cases. *Id.* at 449.

The Florida Supreme Court denied Hurst relief on each of his claims and affirmed his conviction and sentence. *Hurst* at 449. It also denied his motion for rehearing (attached as "Appendix B" to Hurst's Petition for Writ of Certiorari). Thereafter, Hurst filed his Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I.

PETITIONER'S ATTEMPT TO EXTEND THIS COURT'S RULING IN *RING V. ARIZONA,* TO REQUIRE THE JURY, IN THE PENALTY PHASE OF A CAPITAL CASE, TO DETERMINE WHETHER HE IS INTELLECTUALLY DISABLED HAS BEEN CONSISTENTLY REJECTED. THE DECISION OF THE FLORIDA SUPREME COURT DOES NOT CONFLICT WITH ANY DECISION FROM THIS COURT, ANY FEDERAL COURT OF APPEAL, OR ANY STATE COURT OF LAST RESORT.

Hurst contends that under *Ring*[2], the jury must consider and find a defendant's intellectual disability beyond a reasonable doubt. Review should be denied.

I. Decisions of the Florida Supreme Court.

The Florida Supreme Court has repeatedly held that a defendant has no right to a jury determination of whether he is intellectually disabled. *See Hodges v. State,* 55 So.3d 515, 526 (Fla.2010) (holding that defendant is not entitled to a jury determination of his mental retardation status), *cert. denied,* —— U.S. ——, 132 S.Ct. 164, 181 L.Ed.2d 77 (2011); *Kilgore v. State,* 55 So.3d 487, 510–11 (Fla. 2010) (reiterating that the capital defendant has no right under *Atkins* to a jury determination on whether he is mentally retarded); *Rodriguez v. State,* 919 So.2d 1252, 1267 (Fla. 2005) (same); *Bottoson v. Moore,* 833 So. 2d 693 (Fla. 2002) (rejecting the defendant's *Atkins* claim on the ground that the trial judge had found the defendant not to be mentally retarded).

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[2] *Ring v. Arizona,* 536 U.S. 584 (2002).

II. No Conflicting Decisions.

Other state supreme courts have reached the same conclusion. *See, e.g., Head v. Hill*, 277 Ga. 255, 587 S.E.2d 613, 619-21 (2003) (finding "the absence of mental retardation is not the functional equivalent of an element of an offense such that determining its absence or presence requires a jury trial under *Ring*"); *Russell v. State,* 849 So. 2d 95, 148 (Miss. 2003); *State v. Williams*, 831 So. 2d 835, 860 n. 35 (La. 2002).

In *State v. Flores,* 135 N.M. 759 (N.M. 2004), the New Mexico Supreme Court found,

> Defendant argues that, after *Atkins,* mental retardation is a factual issue upon which a defendant's eligibility for death depends, and that, applying *Ring,* the absence of mental retardation is the functional equivalent of an element of a greater offense and therefore must be proved to a jury beyond a reasonable doubt. We do not believe the absence of mental retardation is an element of a capital offense for purposes of analysis under *Ring. Apprendi* and *Ring* do not apply to cases where the factual finding at issue operates to lower the maximum allowable punishment rather than to raise the punishment above the statutory maximum. Here, a finding of mental retardation operates to reduce the maximum possible sentence from capital punishment to life in prison, and therefore the absence of mental retardation is not an element that must be proved by the State beyond a reasonable doubt.

Id. at 762.

The United States Court of Appeals, Fifth Circuit found similarly, in deciding *In re Johnson*, 334 F.3d 403 (5th Cir. 2003) when it held, "[t]he absence of mental

retardation is not an element of the sentence any more than sanity is an element of an offense." *Id.* at 405.

There is no conflict between the Florida Supreme Court's decision and any decision of this Court or any decision of any state court of last resort or federal court of appeals. There is no basis for granting certiorari review of this case. The petition should be denied.

III. Decisions of the United States Supreme Court.

This Court addressed the issue of intellectually diability in *Schiro v. Smith*, 546 U.S. 6, 126 S.Ct. 7 (2005). In that case, Smith was convicted of first-degree murder, kidnaping, and sexual assault and was sentenced to death. Smith never argued that he was intellectually disabled or that his intellectual disability served as a bar to death penalty, but he did present evidence in mitigation during the penalty phase of his trial showing that he had low intelligence. *Id.* at 6-7. The convictions and sentence were affirmed on direct appeal, and Smith's state petitions for postconviction relief were denied. Smith then filed a petition for a writ of habeas corpus in the United States District Court for the District of Arizona. *Id.* at 9.

The District Court denied Smith's petition for habeas corpus. Following several appeals, remands and petitions for certiorari to this Court, and after this Court had issued its decision in *Atkins,* the case was returned to the Ninth Circuit. Shortly thereafter, Smith argued that he was intellectually diabled and could not be executed under *Atkins*. *Id.* The Ninth Circuit ordered suspension of all federal habeas proceedings and directed Smith to institute proceedings in the trial court to

determine whether the state was prohibited from executing him in line with *Atkins*. The court also ordered that the issue of whether Smith was intellectually diabled had to be determined by a jury. *Id.* at 8.

The State petitioned for certiorari and it was granted. This Court found that the Ninth Circuit erred in ordering the Arizona trial court to conduct a jury trial to resolve Smith's intellectual disability claim. This Court found that, "*Atkins* stated in clear terms that 'we leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.'" 536 U.S., at 317, 122 S.Ct. 2242 (quoting *Ford v. Wainwright,* 477 U.S. 399, 416-417, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); modifications in original)." *Id.* at 9.

This Court, in *Ring,* held that allowing a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty was error. See 497 U.S., at 647-49, 110 S.Ct. 3047. Because Arizona's enumerated aggravating factors operate as "the functional equivalent of an element of a greater offense," *Apprendi,* 530 U.S., at 494, n. 19, 120 S.Ct. 2348, the Sixth Amendment requires that they be found by a jury. Thus, it follows that Ring does not apply when a trial court is presented with facts that a lower sentence should be imposed. Intellectual disability is a mitigator, not an aggravator. *Cf. Kansas v. Marsh*, 548 U.S. 163, 126 S.Ct. 2516 (2006) (overruling the Kansas Supreme Court when it held that that the State was required to prove that a sentence of death was appropriate pursuant to *Ring).*

Based on this precedent, there is no basis for granting certiorari review of this case.

II.

PETITIONER'S ATTEMPT TO EXTEND THIS COURT'S RULING IN *RING v. ARIZONA*, TO THE FLORIDA CAPITAL SENTENCING STATUTE HAS BEEN CONSISTENTLY REJECTED. THE DECISION OF THE FLORIDA SUPREME COURT DOES NOT CONFLICT WITH ANY DECISION FROM THIS COURT, ANY FEDERAL COURT OF APPEAL, OR ANY STATE COURT OF LAST RESORT.

Petitioner requests this Court review the Florida Supreme Court's opinion affirming his sentence of death, arguing that *Ring v. Arizona*, 536 U.S. 584 (2002), questions the constitutionality of Florida's death penalty statute. Review should be denied.

This Court in *Ring* applied its prior opinion in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to capital cases. *Apprendi* held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490. Immediately following this Court's decision in *Ring*, defendants began to challenge Florida's capital sentencing scheme. But in every case where this question has been presented both this Court and the Florida Supreme Court have declined to grant relief.

In this case, Petitioner does not provide a reason for this Court to review the Florida Supreme Court's denial of the *Ring* challenge to Florida's death penalty statute. Indeed, Petitioner, cannot cite to any decision from any appellate court

that conflicts with the Florida Supreme Court's decision in *Hurst v. State*, 147 So.3d 435 (Fla. 2014). Furthermore, the Florida Supreme Court's decision does not conflict with *Ring*, or any other circuit court, or state court of last resort. *Evans v. Sec'y, Fla. Dept. of Corr.*, 699 F.3d 1249 (11th Cir 2012), *cert. denied*, 133 S.Ct. 2393 (2013) (Case No. 12 – 1134).

I. The Decision of the Florida Supreme Court.

The Florida Supreme Court addressed Hurst's claim on appeal and noted that it has repeatedly rejected invitations to extend this Court's holding in *Ring v. Arizona*, 536 U.S. 584 (2002), to the Florida Capital Sentencing statute. The Florida Supreme Court specifically stated:

> We previously rejected the invitation to revisit our decisions in *Bottoson* and *King* in *Peterson v. State,* 94 So.3d 514 (Fla.), *cert. denied,* —— U.S. ——, 133 S.Ct. 793, 184 L.Ed.2d 586 (2012), a case which also did not involve conviction for a prior violent felony or a contemporaneous enumerated felony, and did not involve a unanimous jury advisory verdict. There, the majority stated, "We have consistently rejected claims that Florida's death penalty statute is unconstitutional." *Id.* at 538 (citing *Baker v. State,* 71 So.3d 802, 823–24 (Fla.2011), *cert. denied,* —— U.S. ——, 132 S.Ct. 1639, 182 L.Ed.2d 238 (2012); *Darling v. State,* 966 So.2d 366, 387 (Fla.2007); *Frances v. State,* 970 So.2d 806, 822 (Fla.2007)). Similarly, in *Butler v. State,* 842 So.2d 817, 834 (Fla.2003), this Court rejected the *Ring* claim where there was no aggravating factor based on a prior violent felony conviction and there was no unanimous jury advisory sentence. *See also Ault v. State,* 53 So.3d 175, 206 (Fla.2010) ("[T]his Court has repeatedly and continually rejected such claims" that the advisory verdict must be unanimous); *Coday v. State,* 946 So.2d 988, 1006 (Fla.2006) (reiterating that it is not unconstitutional for a jury to be allowed to recommend death by a simple majority vote). We continue to adhere to this same body of precedent.

Hurst at 446.

II. Petitioner's Death Recommendation Satisfies *Ring*.

Petitioner received a recommendation of death from the jury for the murder of Cynthia Lee Harrison by a vote of seven to five. *Hurst* at 445. There was no prior violent felony aggravator in this case, nor did the jury convict Hurst of a contemporaneous felony.

In *Hildwin v. Florida*, 490 U.S. 638 (1989), this Court found, in a case where the jury recommended death, that Florida's capital sentencing statute does not violate the Sixth Amendment right to a jury trial. And, in *Jones v. United States*, 526 U.S. 227, 250-251 (1999), this Court again observed that the Sixth Amendment is not violated when a Florida jury recommends a death sentence. This is so because if a Florida jury makes a sentencing recommendation of death, the jury has "necessarily engag[ed] in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved." *Jones*, 526 U.S. at 250–51. *See also*, *Evans v. Sec'y, Florida Dept. of Corr.*, 669 F.3d 1249 (11th Cir 2012) (noting that Florida's death sentencing procedures do provide jury input about the existence of aggravating circumstances that was lacking in the Arizona procedures that the Court struck down in *Ring* and in addition to receiving an advisory verdict from the jury the judge is required to give the jury's verdict great weight).

Therefore, because the jury returned a recommendation of death, this Court may infer the jury did find at least one aggravating circumstance beyond a reasonable doubt.

Furthermore, for over a decade this Court has repeatedly denied certiorari review to the Florida Supreme Court in cases which presented the same issue concerning *Ring* on direct appeal.[3] Recently, this Court denied certiorari review in *Peterson v. State*, 94 So. 3d 514 (Fla. 2012), *cert. denied*, 133 S.Ct. 793 (2012) (Case No. 12 – 6741), when there were no contemporaneous corresponding aggravating factors found by the jury, but the jury did recommend the death penalty. Accordingly, certiorari review should be denied.

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[3] *See Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), *cert. denied*, 537 U.S. 1070 (2002) (Case No. 02 – 7530); *King v. Moore*, 831 So. 2d 143 (Fla. 2002), *cert. denied*, 537 U.S. 1067 (2002) (Case No. 02 – 7529); *Duest v. St. of Fla.*, 855 So. 2d 33 (Fla. 2003), *cert. denied*, 541 U.S. 993 (2004) (Case No. 03 – 8841); *Lawrence v. St. of Fla.*, 846 So. 2d 440 (Fla. 2003), *cert. denied*, 540 U.S. 952 (2003) (Case No. 03 – 5708); *Marshall v. Crosby*, 911 So. 2d 1129 (Fla. 2005), *cert. denied*, 547 U.S. 1143 (2006) (Case No. 05 – 9181); *Frances v. St. of Fla.*, 970 So. 2d 806 (Fla. 2007), *cert. denied*, 553 U.S. 1039 (2008) (Case No. 07 – 9801); *Merck v. St. of Fla.*, 975 So. 2d 1054, *cert. denied*, 555 U.S. 840 (2008) (Case No. 07 – 10853); *Davis v. St. of Fla.*, 2 So. 3d 952 (Fla. 2008), *cert. denied*, 557 U.S. 940 (2009) (Case No. 08 – 10024); *Peterson v. St. of Fla.*, 2 So. 3d 146 (Fla. 2009), *cert. denied*, 558 U.S. 885 (2009) (Case No. 09 – 5057); *Abdool v. St. of Fla.*, 53 So. 3d 208 (Fla. 2011), *cert. denied*, 132 S.Ct. 149 (2011) (Case No. 10 – 10531); *McGirth v. St. of Fla.*, 48 So. 3d 777 (Fla. 2010), *cert. denied*, 131 S.Ct. 2100 (2011) (Case No. 10 – 8845); *Zommer v. St. of Fla.*, 31 So. 3d 733 (Fla. 2010), *cert. denied*, 131 S.Ct. 192 (2010) (Case No. 09 – 11400); *Baker v. St. of Fla.*, 71 So. 3d 802 (Fla. 2011), *cert. denied*, 132 S.Ct. 1639 (2012) (Case No. 11 – 8053); *Chandler v. St. of Fla.*, 75 So. 3d 267 (Fla. 2011), *cert. denied*, 132 S.Ct. 607 (2011) (Case No. 11 – 7307); *Braddy v. St. of Fla.*, 111 So. 3d 810 (Fla. 2012), *cert. denied*, 134 S.Ct. 275 (2013) (Case No. 13 – 5347); *Ellerbee v. St. of Fla.*, 87 So. 3d 730 (Fla. 2012), *cert. denied*, 133 S.Ct. 844 (2013) (Case No. 12 – 6570); *Peterson v. St. of Fla.*, 94 So. 3d 514 (Fla. 2012), *cert. denied*, 133 S.Ct. 793 (2012) (Case No. 12 – 6741).

CONCLUSION

Respondent respectfully submits that the petition for writ of certiorari should be denied.

Respectfully submitted,
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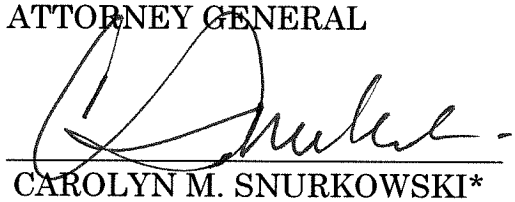
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I, Carolyn M. Snurkowski, a member of the Bar of this Court, hereby certify that on this 28th day of January, 2015, a copy of the Respondent's Brief in Opposition in the above entitled case was furnished by United States mail, postage prepaid, to David A. Davis, Assistant Public Defender, Leon Co. Courthouse, 301 S. Monroe St., Ste. 401, Tallahassee, FL 32301.

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