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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICICAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. Case No. 2011-CF-2979-A

MARK ANDREW JONES,

Defendant.

_____/

MOTION TO CORRECT ILLEGAL SENTENCES

In accordance with Florida Rule of Criminal Procedure 3.800(a), Defendant Mark Andrew Jones, *pro se*, moves the Court to correct his illegal sentences because its records demonstrate on their face an entitlement to that relief due to the unconstitutionality of section 775.082(9), Florida Statutes:

1. On October 15, 2020, two attorneys, William Ponall and Adam Reiss, filed a motion in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, seeking a declaration that the Prison Releasee Reoffender (PRR) statute set forth in section 775.082(9) is unconstitutional, both on its face and as applied, because if the required statutory finding is made by a sentencing judge (using the lesser preponderance of evidence standard) rather than a jury (using the greater beyond a reasonable doubt standard), the sentence for their client, Ricky Tyrone Neal, would be aggravated beyond the legally prescribed range of available sentences in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. Exh. A, Motion to Declare Fla. Stat. § 775.082(9) Unconstitutional at 1-9, *State of Florida v. Ricky Tyrone Neal*, No. 1999-CF-10077 (Fla. 9th Jud. Cir. Ct. Orange Cty. Oct. 15, 2020) ("Motion").

2. On December 8, 2020, the Honorable Tom Young, a Circuit Judge of the Ninth Judicial Circuit, Orange County, Florida, **granted** Neal's counseled motion, finding that the PRR statute set

forth in section 775.082(9) is unconstitutional, both on its face and as applied, explaining, in relevant part:

> THE COURT: I think the language in *Williams* [*v. State*, 143 So. 3d 423 (Fla. 1st DCA 2014)], from the First District Court of Appeal, is – I mean, I disagree with it. I may be bound by it, but I disagree with it. Because you can't reconcile the – the First District's statement with the holding in *Alleyne* [*v. State*, 570 U.S. 99 (2013),] that says, "When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to a jury."
>
> I – and then, in the next paragraph, the court said, "It constitutes an element of a separate aggravated offense. It must be found by the jury." And they say, **"The essential point is that the aggravating fact produced a higher range, which, in turn, conclusively indicates that the fact is an element of a distinct and aggravated crime."**
>
> I just don't see how that language from *Alleyne* is – can be confused with – with what the 2014 *Williams* court said. But – but the fact of the matter is, *Williams* was aware of *Alleyne* and ruled the way it ruled and I may be bound by it. But let me look again at [*Williams v. State*, 242 So.3d 280 (Fla. 2018)], because that case is Florida Supreme Court and it comes after the 2014 *Williams*.
>
> (Pause.)
>
> Yeah. And in – *Williams*, from the 2018 Florida Supreme Court, in describing *Alleyne*, they say, **"The Supreme Court held that any fact that increases the mandatory minimum sentence for an offense is an element which must be submitted to a jury and found beyond a reasonable doubt."**
>
> (Pause.)
>
> All right. I think the language in *Alleyne* is pretty clear. I think going back to *Jones* – I mean, I was really struck by the language in *Jones* [*v. United States*, 526 U.S. 227, (1999)], and I repeat that. "Any fact other than a prior conviction that increases the maximum penalty for a crime must be charged in an indictment submitted to a jury and proven beyond a reasonable doubt." [*Id.* at 243 n.6.]
>
> **And I think that *Alleyne* and [*United States v.*] *Haymond* [588 U.S. ____, 139 S. Ct. 2369 (2019),] which is only a plurality opinion, but I think that the broad and unequivocal language that the Supreme Court has used, combined with the way *Williams v. State*, 242 So.3d 280, Florida Supreme Court 2018, quotes *Alleyne*, I'm going to find that the statute can't be constitutionally applied because the fact is any aggravating factor and, thus, a constituent element and has to be submitted to the jury and proven beyond a reasonable doubt, just as a prior conviction would have to be submitted to a jury and proven in order to obtain a conviction for possession of a firearm by a convicted felon or, as Mr. Ponall argued before, driving while license suspended type charge. So I'm going to grant the motion.**

All right. Do I need a written order, Mr. Ponall, or will the minutes and the record suffice?

MR. PONALL: I think – I think the signed court minutes is – is sufficient for the defense.

THE COURT: Say that again?

MR. PONALL: I think you've articulated your reasoning on the record, so a signed – signed court minutes are, I think, sufficient.

THE COURT: Okay.

Exh. B, Transcript of Hearing on Defense Motion to Declare Florida Statute 775.082(9) Unconstitutional at 40-42, *State of Florida v. Ricky Tyrone Neal*, No. 1999-CF-10077 (Fla. 9th Jud. Cir. Ct. Orange Cty. Jan. 8, 2021) ("Transcript of Hearing") (emphasis added).

3. Judge Young's finding that the PRR statute set forth in section 775.082(9) cannot be constitutionally applied is instructive here because this Court's records demonstrate on their face that Jones' is entitled to relief under rule 3.800(a) as they confirm the decisive fact that the Honorable Jessica Recksiedler, Circuit Judge, used the lesser preponderance of evidence standard to make the statutory finding required by section 775.082(9), aggravating Jones' sentences beyond the legally prescribed range of available non-PRR sentences, Exh. C, Minutes, Judgment and Sentence, Cts. 1-2 at 2, *State of Florida v. Mark Andrew Jones*, No. 2011-CF-2979-A (Fla. 18th Jud. Cir. Ct. Seminole Cty. Jul. 31, 2012), which violated the Fifth, Sixth, and Fourteenth Amendments, Motion at 1-9; Transcript of Hearing at 40-42 (citing *Alleyne*; *Haymond*; *Jones*; *Williams*):

Charge	Non-PRR Sentencing Range	Mandatory PRR Sentence
Count 1: Burglary of a Conveyance with an Assault	5.2 Years to Life	Life
Count 2: Attempted Carjacking	5.2 Years to 15 Years	15 Years

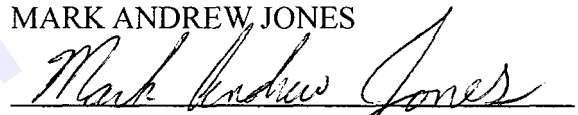
4. Indeed, "the contention," like here, "that a sentence . . . is unconstitutional and illegal is

reviewable by rule 3.800(a)." *Williams v. State*, 197 So. 3d 569, 571 (Fla. 2d DCA 2016) (citing *St. Val v. State*, 107 So. 3d 553, 554-55 (Fla. 4th DCA 2013), in support of the well-settled legal precept that when a defendant claims his or her sentence "constitutes a constitutional violation," the trial court can consider the claim under rule 3.800(a)); *see also Williams v. State*, 754 So. 2d 794, 794 (Fla. 2d DCA 2000) (affirming the summary denial of the defendant's motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 but doing so "without prejudice" to him filing a rule 3.800(a) motion alleging that his Violent Career Criminal (VCC) sentences are "unconstitutional").

WHEREFORE, Jones prays that this Court will correct his illegal PRR sentences because its records demonstrate on their face an entitlement to that relief under rule 3.800(a) as they confirm the fact Judge Recksiedler used the lesser preponderance of evidence standard to make the statutory finding required by section 775.082(9), aggravating his sentences beyond the legally prescribed range of available non-PRR sentences, which violated the Fifth, Sixth, and Fourteenth Amendments.

Respectfully submitted,

MARK ANDREW JONES



MARK ANDREW JONES # E14833
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663-0158

Defendant *Pro Se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under the penalties of perjury that a true and correct copy of this rule 3.800(a) motion was placed in the hands of a prison mailroom employee at Marion Correctional Institution for mailing via prepaid first-class mail to the State Attorney for the Eighteenth Judicial Circuit, P.O. Box 8006, Sanford, FL 32772-8006, on this 25th day of August ,2021.

MARK ANDREW JONES

Exhibit A

Motion to Declare Fla. Stat. § 775.082(9) Unconstitutional,
State of Florida v. Ricky Tyrone Neal, No. 1999-CF-10077
(Fla. 9th Jud. Cir. Ct. Orange Cty. Oct. 15, 2020)

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 1999-CF-10077

STATE OF FLORIDA,

Plaintiff,

vs.

RICKY TYRONE NEAL,

Defendant.
_____/

MOTION TO DECLARE FLA STAT. § 775.082(9) UNCONSTITUTIONAL

The Defendant, RICKY TYRONE NEAL, through the undersigned attorneys, moves this Court for an Order finding that Fla. Stat. § 775.082(9) is unconstitutional. In support, the Defendant asserts the following:

1. The Court granted the Defendant's Motion to Correct Illegal Sentence.

2. The Court has scheduled a resentencing hearing for October 21, 2020.

3. Once a trial court determines that resentencing is appropriate, the defendant is entitled to a de novo resentencing hearing. *See St. Lawrence v. State*, 785 So.2d 728, 729-730 (Fla. 5th DCA 2001).

4. The decisional law in effect on the date of the resentencing hearing applies to that proceeding regardless of when the original conviction was obtained. *See State v. Fleming*, 61 So.3d 399, 408 (Fla. 2011).

5. Therefore, the United States Supreme Court decisions in *Apprendi v. United States*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004), and *Alleyne v. United States*, 570 U.S. 99 (2013), and the Florida Supreme Court decisions in *Williams v. State*, 242 So.3d 280 (Fla. 2018), and *Brown v. State*, 260 So.3d 147 (Fla. 2018), apply to Mr. Neal's resentencing hearing.

6. The State has filed a Notice indicating that it is seeking to have Mr. Neal sentenced as a prison releasee reoffender pursuant to Fla. Stat. § 775.082(9). A copy of that notice is attached as Exhibit A.

7. Pursuant to § 775.082(9)(a)1., an individual is classified as a prison releasee reoffender if he commits or attempts to commit one of the listed offenses within 3 years of being released from a sentence of incarceration imposed for a felony conviction.

8. Section 775.082(9)(a)3. provides the following:

> Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:
>
> a. For a felony punishable by life, by a term of imprisonment for life;
>
> b. For a felony of the first degree, by a term of imprisonment of 30 years;
>
> c. For a felony of the second degree, by a term of imprisonment of 15 years; and
>
> d. For a felony of the third degree, by a term of imprisonment of 5 years.

9. "A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, controlled release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence."

10. Thus, if the State proves by a preponderance of the evidence that a defendant qualifies as a prison releasee reoffender, a trial court is required by § 775.082(9) to sentence the defendant to the statutory maximum sentence for the offense of conviction and the defendant must serve 100% of that sentence day-for-day.

11. If the trial court concludes that the State establishes that Mr. Neal is a prison releasee reoffender pursuant to the requirements of Fla. Stat. § 775.082(9), the court will be required to sentence Mr. Neal to life in prison. A life sentence would be required despite the fact that Mr. Neal's criminal punishment code Scoresheet prescribes a lowest permissible sentence of 234.3 months (19 years, 6.3 months) in prison). A copy of the scoresheet is attached as Exhibit B.

12. Therefore, designation of Mr. Neal as a prison releasee reoffender completely removes discretion from the trial judge to sentence Mr. Neal to a term of imprisonment between 234.3 months in prison and term of life in prison, and requires the judge to impose a minimum mandatory sentence of life in prison.

13. Section 775.082(9) is unconstitutional on its face and as applied to Mr. Neal because it requires that a defendant's minimum mandatory sentence be increased based upon a finding by the trial judge that the defendant committed the offense of conviction within 3 years of being released from prison. The statute permits the trial court to make this finding if the State proves by a **preponderance of the evidence** that the defendant committed the offense of conviction within 3 years of being released from prison.

14. The statute violates *Apprendi*, *Blakely*, *Alleyne*, *Williams*, and *Brown*, because the Fifth and Sixth Amendments require that the finding in question be made by a jury and that the facts necessary to support that finding be proven beyond a reasonable doubt.

15. In *Apprendi*, the United States Supreme Court held that any fact, other than a prior conviction, that increases the maximum sentence a defendant faces must be submitted to a jury and proved beyond a reasonable doubt. 530 U.S. 466.

16. In *Blakely*, the United States Supreme Court reversed a defendant's 93-month prison sentence. The Supreme Court held that *Apprendi* applied where a trial judge exceeded the maximum sentence of 53 months in prison supported solely by the facts admitted in the defendant's plea. The trial judge made an additional finding of fact not made by the jury to justify the aggravated sentence of 90 months in prison. 542 U.S. 296.

17. In *Alleyne*, the United States Supreme Court held that facts that increase the minimum mandatory sentence that must be imposed by the sentencing court must be submitted to the jury and proven beyond a reasonable doubt. In reaching that conclusion, the Court reasoned that, where a fact aggravates the legally prescribed range of allowable sentences, the fact must be found by a jury, regardless of what sentence the defendant might have received if a different range had been applicable. The Supreme Court receded from its prior decision in *McMillan v. Pennsylvania*, 477 U.S. 79 (1986), which held that facts necessary to support a minimum mandatory sentence could be proven by a preponderance of the evidence. The Court also receded from its decision in *Harris v. United States*, 536 U.S. 545 (2002), which held that a trial judge could make findings of fact that support the imposition of a minimum mandatory sentence. *Alleyne*, 570 U.S. 99.

18. In *Williams*, the Florida Supreme Court held that, pursuant to *Alleyne*, the finding as to whether the defendant actually killed, intended to kill, or attempted to kill the victim required by Fla. Stat. § 775.082(1)(b), a different subsection of the statute at issue in Mr. Neal's case, must also be found by a jury beyond a reasonable doubt. The Florida Supreme Court noted that this finding "aggravates the legally permissible range of allowable sentences by increasing the sentencing floor from zero to forty years." 242 So.3d at 288.

19. Most importantly, in *Brown*, the Florida Supreme Court recently held that Fla. Stat. § 775.082(10), also a different subsection of the statute that is at issue in Mr. Neal's case, is unconstitutional because it requires the trial judge, not a jury, to make a finding which increase the defendant's maximum sentence. Section 775.082(10) requires that a defendant whose total sentence points on the criminal punishment code scoresheet are 22 or less must be sentenced to a nonstate prison sanction unless "the court makes written findings that a nonstate prison sanction could present a danger to the public." If the trial court makes that written finding, it then has the discretion to impose a prison sentence. 260 So.3d at 148-151.

20. There is no meaningful distinction between § 775.082(1) and § 775.082(10), which were addressed by the Florida Supreme Court in *Williams* and *Brown*, and § 775.082(9), which is at issue in Mr. Neal's case. Sections 775.082(1) and (10) both impermissibly permitted a trial judge to increase a defendant's sentence based on a finding of fact not made by the jury beyond a reasonable doubt.

21. In Mr. Neal's case, the jury did not make a finding that he committed the offenses for which he is being sentenced within 3 years of being released from prison. For the same reasons articulated by the Florida Supreme Court in *Williams* and *Brown*, it would now be improper for the trial judge to make that finding instead of a jury, and for the trial judge to only require that the

State prove the fact by a preponderance of the evidence as set forth in § 775.082(9)(a)3.

22. Here, like in *Williams*, *Brown*, and *Alleyne*, it is inescapable that, if the trial judge proceeds to make the finding required by § 775.082(9), it will be aggravating the legally prescribed range of available sentences. Prior to the finding being made, the trial judge has the discretion to sentence Mr. Neal to a term of imprisonment between 234.3 months in prison and term of life in prison. After making the finding, the only sentence the trial judge is permitted to impose pursuant to the statute is life in prison. As a result, life in prison would then be the applicable minimum mandatory sentence.

23. Importantly, undersigned counsel has not located a single district court decision that addresses whether the Florida Supreme Court's decisions in *Brown* and *Williams* apply equally to § 775.082(9).

24. The last time the Florida Supreme Court addressed the constitutionality of § 775.082(9) was in *Robinson v. State*, 793 So.2d 891 (Fla. 2001). In *Robinson*, the Florida Supreme Court rejected the defendant's argument that § 775.082(9) was unconstitutional based on *Apprendi*. The Court reasoned that the *Apprendi* Court made it clear that the decision only addresses situations where a defendant's maximum sentence was increased. The Court reasoned that *Apprendi* did not overrule *McMillan v.*

Pennsylvania, 477 U.S. 79 (1986), which held that a fact which required the imposition of a minimum mandatory sentence was not one which needed to be proven to a jury beyond a reasonable doubt. Robinson, 793 So.2d at 893.

25. The Florida Supreme Court's decision in *Robinson* was unequivocally overruled by the United States Supreme Court's decision in *Alleyne*. In *Alleyne*, the United States Supreme Court explicitly overruled *McMillan* and held that the rule announced in *Apprendi* applies equally to facts necessary to support the imposition of a minimum mandatory sentence. 570 U.S. 99.

26. For the aforementioned reasons, this Court should conclude that § 775.082(9) violates the Fifth and Sixth Amendments to the United States Constitution. This Court should declare the statute unconstitutional, decline to find Mr. Neal to be a prison releaseee reoffender, and sentence him pursuant to his criminal punishment code scoreseheet.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this motion was provided by e-service delivery to the Office of the State Attorney, division14@sao9.org, on this 15th day of October, 2020.

/s/ William R. Ponall
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ATTORNEYS FOR DEFENDANT

Exhibit B

Transcript of Hearing on Defense Motion to Declare Florida Statute 775.082(9) Unconstitutional,
State of Florida v. Ricky Tyrone Neal, No. 1999-CF-10077
(Fla. 9th Jud. Cir. Ct. Orange Cty. Jan. 8, 2021)

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

RICKY TYRONE NEAL,

Defendant.

CASE NO.: 48-1999-CF-10077-A-O

DIVISION NO.: 14

DEFENSE MOTION TO DECLARE FLORIDA STATUTE 775.082(9) UNCONSTITUTIONAL

BEFORE

THE HONORABLE TOM YOUNG

Orange County Courthouse
425 North Orange Avenue
Orlando, Florida 32801
Courtroom 12A
December 8, 2020
Transcribed from digital media

A P P E A R A N C E S:

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On behalf of the Defendant

- - -

I N D E X

December 8, 2020

- - -

P R O C E E D I N G S

(December 8, 2020; 1:35 p.m.)

THE COURT: Madam Clerk, let's go ahead and call it on the record.

THE CLERK: State of Florida versus Ricky Neal, 1999-CF-10077.

State?

MR. SEEGOBIN: Ralph Seegobin for the State of Florida.

THE CLERK: Defense?

MR. PONALL: William Ponall for Mr. Neal.

MR. REISS: Adam Reiss on behalf of Mr. Neal.

However, as the Court's well aware, Mr. Ponall's going to be making the argument this afternoon.

THE COURT: Right. Right.

Now, is there a device Mr. Neal can see Mr. Ponall, or no?

MR. REISS: You know, I'm going to go ahead and grab that link right now, and he can watch on my phone.

THE COURT: Okay. That's fine.

And you'll be able to hear anyway, Mr. Neal.

All right. So we're here on a pre, I guess, resentencing motion to declare Section 775.082(9)

Florida Statute is unconstitutional.

And so I saw that, Mr. Ponall, you sent some more case law today; you'd sent some the other day. Mr. Seegobin sent *Calloway* and the Supreme Court's order denying cert. I'd already read *Calloway*. I've already read everything, Mr. Ponall, you had submitted in your first packet. I glanced through what you sent today. I'm obviously not as well-versed in all this as you are, but I've read everything. So --

(Audio interference.)

Let's see...

MR. SEEGOBIN: That might be my phone.

THE COURT: Can you mute that phone?

MR. REISS: Your Honor, that's fine. I'll -- I'm unable to log in but I -- I think we're good. Mr. Neal will be fine --

THE COURT: Okay.

MR. REISS: -- with what's going on.

THE COURT: Did you mute your device, Mr. Seegobin?

MR. SEEGOBIN: It is muted, Judge.

THE COURT: Okay. Perfect.

MR. SEEGOBIN: I'm sorry about that.

THE COURT: No, that's fine. Just -- I think that will take care of it.

All right. Mr. Ponall, if you would like to proceed with your arguments?

MR. PONALL: Sure. Thank you, Judge.

It's our position that Florida Statute 775.082(9) is unconstitutional on its face and as applied to Mr. Neal, because it requires a position of a minimum mandatory sentence of life in prison on Count 2 based on approve of his prison release date by a preponderance of the evidence instead of beyond a reasonable doubt and it allows the Court, instead of a jury, to make that finding of fact.

And I -- I hear some background noise. Are you able to hear me, Your Honor?

THE COURT: I can hear you. But let me say I just -- I just turned on the recording, so if you want to start over, you can because -- you're being recorded by the court reporter as well, but I'm recording Teams as a backup, and I had forgot to do that at the beginning.

MR. PONALL: Sure. I'm happy to start over.

THE COURT: But I -- but, yes, I'm hearing you fine. Everybody seems to be muted, except you and me, in order for you to come over the -- the mic or the speakers.

MR. PONALL: Thank you, Judge.

All right. It's our position that -- that Section 775.082(9) is unconstitutional on its face and as applied to Mr. Neal, because it requires a position of a minimum mandatory sentence of life in prison on Count 2, if the State is able to prove a release date from prison within -- within three years of his new offense date. And the problem is it allows proof to be by a preponderance of the evidence, as opposed to beyond a reasonable doubt and allows the trial court to make that finding of fact as opposed to the jury.

And it's our position that that violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitutions -- Constitution, pursuant to U.S. Supreme Court and Florida Supreme Court decisions, including *Apprendi*, *Alleyne*, *Brown*, and *Williams*.

In this particular case, if the Court were to conclude by a preponderance of the evidence that the State proved that Mr. Neal is a prison releasee reoffender, under this statute, the Court would be required to impose a sentence of life in prison on Count 2 for kidnapping. The Court will have no discretion at all. And that life sentence, that minimum mandatory life sentence, would be required, despite the fact that Mr. Neal's scoresheet has a low

permissible sentence of approximately 19.5 years.

So, in this particular case, we have judicial fact finding by a preponderance of the evidence that would alter a legally prescribed sentencing range and require a minimum mandatory sentence. And we believe that violates *Apprendi*, *Alleyne*, and the progeny of those cases.

I'm gonna -- I'm gonna start with -- with the discussion of *Apprendi* and kind of summarize why I think the State's argument is wrong, and why -- why a prison release date is not exempt from the *Apprendi* rule, and why that this particular fact would have been proven beyond a reasonable doubt to a jury.

Back in 2000, the U.S. Supreme Court held that other than a fact -- 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. And -- and they said, "other than the fact of a prior conviction." They didn't say facts related to a prior conviction, facts that -- that are consequence of a prior conviction. They said, "the fact of a prior conviction."

And on page 10 of the opinion in *Apprendi* -- I'm using the page numbers on the bottom right-hand

corner -- they -- they talk about this prior conviction exception under the *Almendarez-Torres* case. And they -- and they say it's based on the prior commission of a serious crime, and that there's procedural safeguards that exist for a judgment and sentence that results for a conviction and make it different than other fact because the defendant had to go through a trial where he had procedural safeguards and the State had to prove his guilt beyond a reasonable doubt. So a judgment and sentence recording that fact is more reliable than any other fact other than the simple fact of a prior conviction.

And the Court said that that's not true for -- for other facts, and that's on page 10 and 12 of the opinion. And on page 12 of *Apprendi*, itself, they say, the prior conviction exception is "a narrowing exception."

So -- so it's our position that there's no support from *Apprendi*, itself, to suggest that any fact, other than the bare fact that there was a conviction, is exempt from the *Apprendi* rule that -- that a fact has to be proven beyond a reasonable doubt to a jury. There's no indication from the plain language of *Apprendi* that there's any other exception, or the exception is any broader than the simple fact

of a prior conviction.

In 2004, we get to the *Blakely* case. And the -- they reapply the *Apprendi* rule, and they say that, "the maximum sentence is limited to the fact reflected in the jury's verdict or admitted to by the defendant." And that's on page 5. And, again, they say, "other than the fact of a prior conviction." Any -- any fact -- any other fact must be proven to a jury beyond a reasonable doubt.

So, again, it's our position, if you read *Apprendi* and *Blakely*, the only fact that is exempt is the simple fact of a prior conviction.

Next, we get in 2013 -- and I think this is probably the most important case before the Court today -- is the *Alleyne* case. And in that case, the U.S. Supreme Court overruled its prior precedent in *Harris* and *McMillan*, which had exempted minimum mandatory sentences from the *Apprendi* rule, and said now the *Apprendi* rule applies to minimum mandatory sentences. And it explicitly said on page 4 and 5 of the opinion, "any fact that increases the minimum mandatory is an element in the offense that must be submitted to the jury and proven beyond a reasonable doubt."

On page 7, they indicated that *Apprendi* applies

to both facts that increase the floor and the ceiling of the -- the sentencing range.

So, in our particular case, Mr. Neal's floor has gone from approximately 19.5 years to life, based on application of this statute, if the Court makes this finding of fact under the preponderance of the evidence standard.

So it's our position because *Alleyne* explicitly overruled *Harris* and *McMillan*, and now that minimum mandatory sentences are controlled by the *Apprendi* rule, that this particular fact, the prison release date, also must be proven to a jury and, contrary to the statute, (indiscernible) preponderance of the evidence must be proven beyond a reasonable doubt.

In 2018, the Florida Supreme Court applied the *Alleyne* case to a different subsection of this Statute 775.082(1)(b), and they found a Sixth Amendment violation; if the Court, instead of a jury, found that a juvenile defendant actually killed, intended to kill, or attempted to kill the victim, and once the Court makes that finding, then the -- the juvenile defendant is subject to a 40 year minimum mandatory sentence; without that finding, there is no minimum mandatory sentence. And the Court applied *Alleyne* and said that this finding of fact by the trial judge

aggravated the legally prescribed sentencing range and violated *Alleyne*.

Again, this is a different subsection of the same statute. And the fact that this is in a sentencing statute as opposed to an offense statute, it's relevant under *Apprendi* and obviously under *Williams*, they -- they're -- they're reviewing the same statute where we have a sentencing statute.

In *Brown* in 2018, Supreme Court, again, applied *Alleyne* and *Apprendi* to find another subsection 775.082(10) violated the *Apprendi* rule because it allowed the judge to increase the maximum based on a fact finding him dangerous. They said that the jury had to make that fact finding.

Now, in -- in my review of the case law, it's -- it's my understanding in what I found, the last time the Florida Supreme Court addressed this issue was back in 2001 in the *Robinson* case. And they rejected the defendant's *Apprendi* challenge to this particular statute. But their reasoning was that *Apprendi* had not overruled *McMillan*, which said that the minimum mandatory sentences were not subject to the *Apprendi* rule.

Well, now we have, 13 years later, in *Alleyne*, where they say *Apprendi* does apply to minimum

mandatory, *Williams* from the Florida Supreme Court comes to the same conclusion.

So it's our position, based on *Alleyne* and *Williams*, that *Robinson* is no longer good law because it was based on the premise that minimum mandatories were not subject to the *Apprendi* rule, and we now know that that's no longer the case.

In support of that -- that argument, I would cite one of the cases that I sent to the Court this morning, the *Hernandez* case. On page 2 of the opinion, using up the right-hand corner, bottom right-hand corner, the -- the last paragraph in the left-hand column, they're arguing about the confrontation clause, but they're arguing about whether a previous Florida Supreme Court decision is binding. And they point out, as *Hernandez* points out in its brief -- although -- although in *Globe*, the Florida Supreme Court held that the admission of a codefendant's statement as an adopted admission did not violate the -- the confrontation clause, *Globe* was based on the decision of the U.S. Supreme Court in *Ohio v. Roberts*, which was overruled by *Crawford*. As such, this Court is not bound by *Globe*.

We have the same situation here, *Robinson* was based on *Apprendi* and *McMillan*, but *McMillan* is no

longer good law. So based on -- on this -- this analysis of *Hernandez*, and based on these new decisions in *Alleyne* and *Williams*, this Court is no longer bound by *Robinson*, what is bound by *Alleyne* and *Williams*.

The State cites several cases in support of their argument that the statute is constitutional and this Court should not (indiscernible). And we think they're all distinguishable or -- or don't apply for a particular reason.

Initially, the State cites *Calloway* from 2005. And, first, this is pre-*Alleyne* and pre-*Williams*, so it's our position that the landscape has changed. And then, second, the *Calloway* case acknowledges specifically that the date of release from a prior prison sentence is a distinct fact, fact prior conviction, but they say it's a derivative of the prior conviction so that's okay and it doesn't -- doesn't apply.

Again, I suggest all the U.S. Supreme Court cases that we've cited, the *Williams* case, and the Florida Supreme Courts, the plain language of those cases suggests it's only the fact of the prior conviction, no derivative facts or related facts are exempt from the *Apprendi* rule. So the Second DCA's got it wrong.

They've kind of gone rogue and expanded this rule.

There's a lot of derivative facts from a -- from a conviction. You could get -- you could get a license suspension as a result of a conviction. But to prove a DWLS, the State still has to prove your license was suspended, not just a -- and they have to prove that to a jury. It doesn't have to be just proved to a -- to a judge.

So it's our position that the *Calloway* case improperly expands the rule established *in Apprendi* applied at *Alleyne* and applied in *Williams*, it clearly limits this exception, this -- and they call it a "narrow exception" to the mere fact of a prior conviction.

The -- the date the defendant was released from prison as a result of a conviction, is a completely different factual finding. Unlike the actual conviction, it hasn't gone through the procedural safeguards of trial and beyond a reasonable doubt.

A prior conviction -- Mr. Neal's prior convictions have already gone through those safeguards. Nobody's proven beyond a reasonable doubt the date of his release. Those are distinct facts, and for those reasons, *Calloway* does not apply.

Next, I provided a couple cases, in candor to

the Court, *Jackson*, from the First DCA, rejected the argument that I'm making today, that *Alleyne* makes the PRR statute unconstitutional. I'll -- I'll invoke that the *Jackson* case was decided on February 19th, 2018. The *Williams* case from the Florida Supreme Court was a couple days later, February 22nd, 2018. *Williams* was, I believe, the -- the first case, or one of the first cases, to apply *Alleyne* to -- to a statute similar to the one today. So it's our position that *Alleyne* and *Williams* from the Florida Supreme Court make *Jackson* no longer good law.

Jackson also relies on the *Williams* case from the First DCA as a basis for its decision. The *Williams* case also rejects an *Alleyne* challenge. Of course, it predates the *Williams* case from the Florida Supreme Court. It also makes the bizarre finding that the PRR statute does not impose a minimum mandatory sentence. And that's simply not true from the plain language of 775.082(9).

As the Court's aware, if the Court finds the State may -- proves PRR by a preponderance, there's a minimum mandatory sentence of life in prison on Count 2. So the *Williams* finding that there's no minimum mandatory sentences; perplexing and I think incorrect. Additionally, the *Williams* case relies on

Robinson in 2001; again, which we believe has been overruled by *Alleyne* and *Williams*.

So it's our position that you cannot reconcile these DCA decisions finding the statute to be constitutional, and the *Robinson* case from 2001 with the U.S. Supreme Court's decision in *Alleyne*, and the Florida Supreme Court's decision in *Williams* in 2018, and for those reasons, the Court should find that the reduced preponderance standard and the fact that the judge as opposed to the jury is allowed to make this finding, render this particular statute unconstitutional on its face and as applied to Mr. Neal, and we'd ask the Court to make that finding.

THE COURT: All right. Does *Jones v. U.S.* have any application here as well?

MR. PONALL: *Jones* -- it's my understanding *Jones* was the precursor to *Apprendi* and -- and suggested -- and was the first case that laid out the rule that proof had beyond -- any fact that increased the maximum had to be proven beyond a reasonable doubt and submitted to the jury.

So I don't think -- I don't think it alters the law, I think it was just a precursor to *Apprendi*, my under --

THE COURT: All right. Mr. Seegobin?

MR. SEEGOBIN: Yes, Judge.

Obviously, we disagree that *Calloway* is no longer good law. And, also, I'm going to point to a case that was also included in this packet from defense, *Williams v. State*. I'm -- I'm referring to the First DCA decision. It's 2014, the citation on that is 143 So.3d 423.

And, Judge, I just want to go over a few things with the Supreme Court cases, *Apprendi*, *Blakely*, and *Alleyne*, in regards to what the fact was that the court made the decision on.

And in *Apprendi*, we have a situation here where we're talking about a New Jersey hate crime statute. And in that case, the judge, in that particular case, decided to find by a preponderance of the evidence that the defendant committed a crime, which was to intimidate a person or a group because of race. So that had to do with conduct of the defendant.

In *Blakely*, we're dealing with a Washington Statute with a -- with a defendant who kidnapped his wife. In that particular case, the judge conducted, for himself, a three-day bench hearing and issued 32 findings of fact on whether there was deliberate cruelty. So, again, we have a situation regarding the conduct of the defendant.

In *Alleyne*, there's a violation of a federal firearm statute. And, in this particular case, the judge made a finding that the defendant brandished the firearm. That -- that's kind of similar to how we have actual possession in -- in -- I guess, in the federal language "brandished a firearm".

The court in that case made a finding that the defendant brandished a firearm, despite a finding from the jury in that case that the -- that the defendant did not, in their verdict form.

We also have mention of a few Supreme Court cases where judges were making findings based on dangerousness and whether the defendant murdered somebody in that context as a juvenile.

So these are all findings about the defendants' conduct. Why is that different from PRR? Because the judge, the court, is making a decision based on the date of a prior conviction.

And we go back to *Calloway*. And I think *Calloway*, we would argue, is still good law. *Calloway* says, "While we recognize the fact that Calloway's date of release from his prior prison sentence is not the same as a bare fact of prior conviction, we conclude that it is directly derivative of a prior conviction and, therefore, does not implicate Sixth

Amendment protections."

That case cites to a few federal cases, *United States v. Pineda-Rodriguez*, 133 Fed.Appx. 455. It's a Tenth Circuit case from 2005, holding that "The date of the fact of defendant's release from custody and the fact that defendant was on supervision during commission of the instant offense, fall under the prior conviction exception because they are subsidiary findings that are merely aspects of the defendant's recidivist potential, easily verified and require nothing more than official records, a calendar, and the most self-evident mathematical computation."

They also cite *to United States v. Garcia-Rodriguez*, 127 Fed.Appx. 440, Tenth Circuit case from 2005, holding that "The prior conviction exception of *Apprendi*, permits a court to find facts intimately related to the underlying prior conviction, such as, whether the defendant is the same person who committed the prior crimes."

They also cite to *Ryle v. State*, apparently an Indiana case, holding that "The fact that the defendant was on probation at the time he committed the instant offense is a derivative of his criminal history, does not implicate *Blakely*."

They also cite to a *State v. Perez*, it seems to

be an Oregon case, holding that "The fact that the defendant was on parole and probation at the time of the offense was not a fact of a prior conviction for purposes of *Apprendi* because the same procedural safeguards attached to a fact of a prior conviction had not attached to that fact." They concluded, "The fact of the date of release from prison is based upon a prior conviction and is therefore closely related to prior judicial record and not the type of fact that is subject to the safeguards of *Apprendi*."

Defense seems to -- defense believes that *Alleyne* has changed *Apprendi*. In this *Williams* case, from 2014, the -- we also have a situation with a -- with a PRR sentence. And the defendant made a similar argument that the PRR sentence is unconstitutional because the trial court, not the jury, found the facts necessary to establish him as a prison releasee reoffender.

And he asserts that under *Alleyne*, this new case from 2013, that "Any facts that increase the mandatory minimum sentence for an offense must be submitted to the jury and found beyond a reasonable doubt." Arguing the same Fifth and Sixth Amendment violations.

The court here -- and this is the First District, so -- so this -- this argument that the Second

District Court of Appeals went rogue, seems to be incorrect. The First District here, says, "The appellant correctly encapsulates the holding in *Alleyne* but it does not apply to this case. *Alleyne* dealt with the sentence imposed under a federal statute providing for a five year mandatory minimum if the defendant used or carried a firearm while committing a crime of violence and a seven year mandatory minimum if the defendant brandished a firearm," like I referred to.

Appellant's case involves no mandatory minimum sentence and no enhancement. And that's -- that's what counsel was referring to as -- as a bizarre sort of language. But it says, furthermore, *"Alleyne* leaves intact the Supreme Court's decision in *Apprendi v. New Jersey*, which held that other than the fact of a prior conviction as we've heard, any other fact that increases the penalty must be submitted to a jury and proved beyond a reasonable doubt."

They conclude, "The Florida Supreme Court has held that *Apprendi* does not require a jury to determine whether the defendant committed the charged offense within three years of being released from prison." They refer to the *Robinson v. State* case out of 2001. And they -- they finally conclude at the

end, "The key fact pertinent to PRR sentencing -- whether the defendant committed the charged offense within three years of release from prison -- is not an ingredient of the charged offense, rather it relates to the fact of the prior conviction. Accordingly, we hold that *Alleyne* does not require a jury to make a PRR factual determination."

And then going back to that *Robinson* case, we would also submit that this is not any law that's been overturned either. That, specifically, "The finding that we hold that *Apprendi* does not require the petitioner's release to be proved to a jury beyond a reasonable doubt." That seems to be something that is long held by Florida. And the U.S. Supreme Court had an opportunity to review this particular set of circumstances under *Calloway*, and they -- they denied writ of cert in that particular case.

So it's -- it's easy to see why, given the facts that were found by the court under *Apprendi*, under *Blakely*, under *Alleyne*, under some of these other Florida Supreme Court cases that went well beyond something that could be easily ascertained here in -- in the prior conviction, the date of the prior conviction.

And I believe that *Calloway* gives us the

opportunity to not even make an extension, but -- but this being something that's so closely related to a prior conviction, the date of the prior conviction is not something that violates the Fifth or Sixth Amendment. So we would -- we would argue that this statute is not unconstitutional, on the grounds that it violates the Fifth and Sixth Amendment.

THE COURT: All right. Mr. Ponall, do you have any further argument you want to make?

MR. PONALL: Yeah. Just a short rebuttal.

I'd ask the Court to closely review the language in *Apprendi* when it talks about the prior conviction exception. They emphasize how narrow it is and how the procedural safeguards are present, and though they're not present here for the prison release date. So *Apprendi*, and all its progeny, make it clear that this is a very narrow exception.

There's no -- no authority to this conclusion that a related -- a fact related to the conviction is exempt from *Apprendi* or any of the cases after that. That's made -- made up judge law that does not flow from *Apprendi* or *Alleyne*.

The State's reliance on -- on the First District's decision in *Williams*, again -- I mean, the Court -- Court can look at it. The First DCA, there's

no minimum mandatory sentence when the guy got a 15 year PRR sentence, which is a minimum mandatory sentence, so that's just factually wrong. But, more importantly, the *Williams* decision relies on *Robinson*, which it's -- it's impossible to say that *Robinson* is still good law when it's based on *Harris* and *McMillan*, now being overruled, and *Alleyne* overruled them.

So to say that *Robinson* is still good law, this -- this cannot be the case. And the Court -- the Court can't ignore U.S. Supreme Court and Florida Supreme Court precedent that makes it clear that -- that -- that this prior Florida Supreme Court case is no longer good law. And that's what -- what they say in *Hernandez* in the Third DCA, where -- where the Florida Supreme Court in *Globe* said there wasn't a confrontation clause violation but it relied on *Ohio v. Roberts*, and *Ohio v. Roberts* was overruled. So they said now *Globe* is no longer good law. So when *Robinson* is relying on *McMillan* and *Harris* and those cases have been overruled, it's impossible to conclude that -- that *Robinson* is still good law.

The -- again, the Second DCA in *Calloway* says closely related to the prior conviction. There's no support for that. The U.S. Supreme Court, Florida Supreme Court, and the Second DCA, itself, notes that

there's conflict on that issue.

But it's our position that *Alleyne* and the 2018 Florida Supreme Court decision in *Williams* make it clear that the narrow exception that was established for prior convictions in *Apprendi* remains narrow, and there's no basis to expand that exception to any other facts other than the bare fact of a conviction.

So it's our position the State's arguments are not well-founded, and that the statute should be declared unconstitutional on its face and as applied to Mr. Neal. Thank you.

THE COURT: So I have a question about the *Haymond* case, that's from 2019. What's the precedential value of that case?

MR. PONALL: So, certainly, there's a plurality and then there's a concurrence. So -- so my understanding of the law is that the concurrence is the rule that -- that applies. The concurrence agrees that the -- the finding in that case, made by the judge by a preponderance, violated the Sixth Amendment.

So -- although concurrence doesn't explicitly apply *Apprendi*, itself, to the case, it still says it's a Sixth Amendment violation. So I think it just

further supports our argument. The -- and the facts of that case are a supervised release or a probation violation, which is -- the main argument in that case is that's distinct from a -- a (indiscernible) regular sentencing. We're here, at a regular resentencing, where it's -- where it's clear under the cases I provided that *Apprendi* and *Alleyne* apply. It's the date of sentencing that control as to what case law applies. So I think that that case just provides further support for the defense's argument.

If the Court -- if the Court thinks otherwise, I -- I'd love -- I -- I'm happy to answer why -- respond to why the Court believes so, but I -- I don't see it.

THE COURT: Well, no. You've -- you've -- what you've said is in line with what my understanding is, that it -- a plurality is persuasive but not necessarily binding.

Mr. Seegobin, do you want to address *Haymond*?

MR. SEEGOBIN: No, Judge. But -- well, I guess I -- I should say a little something on it. This has to do, again, with a -- a judge who made a finding about the defendant being in possession of pornographic, child pornographic, material.

So, again, this is -- this is something based on

conduct, something that the defendant did pursuant to this -- whatever charge he's -- whatever charge he's -- he's been charged with.

The fact of a date of a prior conviction is just very, very different. And I -- I think the --

THE COURT: Well, we're not talking about the prior conviction, we're talking about the sent -- the release date; aren't we?

MR. SEEGOBIN: It is --

THE COURT: We're talking about a release date.

MR. SEEGOBIN: We are talking about a release date from --

THE COURT: And that's not something you can just calculate from a conviction and from a sentence because of gain time and things like that, I think.

MR. SEEGOBIN: That -- that is fair, Judge.

But looking at -- looking at the way *Calloway* described that this being a direct derivative of the prior conviction. I -- I understand that it's not -- maybe it's not a bare conviction. And I -- but I think that's what *Calloway* stands for here is -- is while they do recognize that his release from a prior prison sentence is not the same as a bare fact of prior conviction, that it is directly derivative of a prior conviction.

But as far as to answer your question about *Haymond*, again, this is something that you can see why it goes beyond what a judge can do, because it has to do with the facts of that particular case and whether or not he possessed something.

Just like going back to *Alleyne*, whether or not this was a race-based crime; whether you go to *Blakely*, whether or not this was done deliberately; to look -- going back to *Alleyne*, whether or not he brandished a firearm. These are things that have to do with the facts of that particular case. This has to do with something that's easily ascertainable in the record as to what he did and -- and -- and when he did it.

THE COURT: So if the defense is correct and the statute is unconstitutional if a jury doesn't make the finding, the Court would still have the authority to impose the life sentence on that?

MR. SEEGOBIN: Absolutely.

THE COURT: Right?

MR. SEEGOBIN: They would be able to.

This particular statute just makes it a must.

THE COURT: Right. Right.

MR. SEEGOBIN: Or shall -- or shall impose the --

THE COURT: Right.

MR. SEEGOBIN: -- maximum sentence.

THE COURT: Okay. And you both have touched on the points that are troubling me, which I guess is why I'm in the firing line.

Mr. Seegobin's correct, that all of the cases seem to address conduct and not really facts that are, more or less, black and white, if you will. On the other hand, the Supreme Court language is very clear and broad, and that's what I'm struggling with.

For instance, in *Haymond*, they cite *Ring* and say, "As the court has -- as this court has repeatedly explained, any increase in a defendant's authorized punishment contingent on the finding of a fact requires a jury and proof beyond a reasonable doubt, no matter what the government chooses to call the exercise."

I mean, that's very broad language. And I think if *Haymond* was controlling, that would -- but I think -- and you guys are calling -- I think, *Alleyne* is what you're calling -- I wasn't sure how to pronounce that name. But it has --

MR. PONALL: I can't remember if that's right or not.

THE COURT: I'm sorry?

MR. PONALL: I call it *Alleyne*, but I'm not sure

if that's correct or not.

MR. SEEGOBIN: Yeah. Neither do I. I just --

THE COURT: Yeah. I have -- I have no idea. I've, in my head, pronounced it many different ways.

Let's see, I have -- I've had so many different screens going here.

And in Justice Thomas' opinion in *Alleyne*, again, has very broad and unequivocal language.

That's not the copy I wanted to open. There it is.

"When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact unnecessarily forms a constituent part of a new offense and must be submitted to the jury."

I mean, that is pretty plain. I mean, basically, they're -- basically, what the court is saying, as I read it, is that it's basically a new aggravated offense that the State has elected to charge.

And the reason I asked Mr. Ponall about the *Jones* case is, it says, any fact -- this is from page 243, Footnote 6. "Any fact other -- any fact (other than prior conviction), that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt."

So it -- I don't have any reservation in finding that *Alleyne* changes -- changes the *Robinson* case, in terms of precedential value and in terms of binding authority, because it came so many years later. And I don't have any qualms about the fact that, saying *Alleyne* changed *Calloway*. I don't even -- I'm not even bothered by the fact the Supreme Court declined review in *Calloway* because the Supreme Court takes less than two percent of the cases it's asked to review, so that's kind of -- not persuasive.

But what I am concerned about, is the -- the *Walker* case because -- and that's what Mr. Ponall sent today, as he was required to do.

MR. PONALL: Which case was that, Your Honor?

THE COURT: I think it was *Walker*? It was the First District case you sent today. Am I --

MR. SEEGOBIN: Was that *Williams*, Judge?

THE COURT: Is it --

MR. PONALL: *Jackson*?

THE COURT: *Jackson*. Yes, *Jackson*.

MR. PONALL: *Jackson* and *Williams*, but were both today, First DCA.

THE COURT: I'm sorry? What about a PCA?

MR. PONALL: No. From the First DCA was -- today, was *Williams* and *Jackson*.

THE COURT: Okay. Yeah. So it would -- let me look.

(Pause.)

I've reviewed these cases on different computers and so I'm popping them up on different screens and it's -- lesson learned, don't do that again.

MR. SEEGOBIN: Judge, I think I know the case you're talking about. I think it's *Williams* that was sent today. And I've got a paper copy if it would help?

THE COURT: Okay. I can -- I can pop it open --

MR. SEEGOBIN: All right.

THE COURT: -- through my email.

So I guess *Williams* is the case I was thinking about, but also *Jackson*, because *Jackson* refers back to *Williams*, doesn't it? And says --

MR. PONALL: It does.

MR. SEEGOBIN: It does.

THE COURT: Yeah. And says they were bound by *Williams*. And that's kind of where I feel like I am, because under *Ricardo v. State* (phonetic), I'm bound by an opinion of the District Court of Appeal, unless there's a conflict or unless it's been overturned. And I don't find *Calloway* persuasive because it was decided before *Alleyne*. But *Williams* was decided

after *Alleyne*, and *Jackson* is finding itself bound by *Williams* and -- so I am struggling with how I'm not bound by *Williams*.

MR. PONALL: Judge, if I -- if I -- if I may, I -- can I address that?

THE COURT: Sure. I mean, I understand that -- I mean, *Haymond* would be the easy out but, go ahead.

MR. PONALL: So -- so I -- I -- I think this is the -- definitely the -- the most difficult part of the decision; I agree with the Court.

But -- so -- so we start with *Williams*, which is the 2014 case, and at least part or -- or most of their decision, is based on citation to *Robinson*, which -- which we know is no longer good law, and then *Jackson* cites to *Williams*. So what I would say is *Williams* is based on the faulty premise that *Robinson* is good law, and by definition, then *Jackson* is based on the same premise because it relies on *Williams*.

So -- so I would suggest to the Court that you're not bound by it because you -- you are finding that *Robinson* is no longer good law, and that's -- and based on *Alleyne* and the Florida Supreme Court's decision in *Williams* in 2018. So -- and so I think based on those two cases, the Court is not bound by it because -- because both these cases are -- are -- rely