IN THE SUPREME COURT OF ALABAMA

EX PARTE CHRISTOPHER BROOKS	)	
	)	
In re: State of Alabama,	)	
Respondent,	)	**No. 1951964**
	)	**DEATH PENALTY CASE**
	)	**JANUARY 21, 2016 EXECUTION**
v.	)	**DATE**
	)	
Christopher Brooks,	)	
Petitioner.	)	

PETITION FOR STAY OF EXECUTION AND RELIEF FROM UNCONSTITUTIONAL SENTENCE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases:

State Statues:

I. INTRODUCTION

Christopher Brooks is under sentence of death at Holman Prison in Atmore, Alabama. Mr. Brooks' execution has been scheduled for **January 21, 2016**. Mr. Brooks' death sentence might be unconstitutional under *Hurst v. Florida*[1] and, if it is unconstitutional, he is entitled to relief. Mr. Brooks' death sentence should not be carried out while critical questions concerning the constitutionality of Alabama's capital sentencing scheme remain unanswered. Thus, this Court should exercise its equitable powers, grant Mr. Brooks a temporary stay of execution, and undertake full consideration of this issue.

II. STATEMENT OF THE CASE

On December 31, 1992, during a welfare check, Homewood Police discovered Jo Deann Campbell's partially clothed body concealed beneath her bed.[2] Crime scene investigators soon surmised that Ms. Campbell had been sexually assaulted and beaten to death and her belongings, including her credit card, car, and other items, taken. Christopher

[1] No. 14-7505, 2016 WL 112683, at *1 (U.S. Jan. 12, 2016).
[2] (R. 336).

Eugene Brooks and Robert Patrick Leeper, who had been overnight guests of Ms. Campbell's on December 30, quickly became prime suspects in her murder.[3] Although physical evidence established the presence of both men in Ms. Campbell's home, and though police attributed the theft of Ms. Campbell's property to both men, only Mr. Brooks eventually faced three capital murder charges -- murder during rape, murder during robbery and murder during burglary.[4]

Mr. Brooks, who was by then 20 years old, went to trial in the Jefferson County Circuit Court on September 20, 1993, only nine months after his arrest.[5] Because Mr. Brooks could not afford to hire lawyers, two were appointed to represent him: Scott Boudreux and Ken Gomany. A jury convicted Mr. Brooks of capital murder on September 23, 1993.[6] Later, after considering virtually no mitigating

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[3] (R. 299-302).

[4] Despite the evidence implicating Mr. Leeper in the crime, the prosecution allowed Mr. Leeper to plead guilty to theft of a credit card and he received a five year split, time served sentence on December 17, 1995.

[5] (R. 12).

[6] (C.R. 93-95).

evidence and two aggravating circumstances, the jury recommended a death sentence by an 11-1 margin.[7]

On November 10, 1993, when it was time for Mr. Brooks' counsel to present more mitigating arguments and evidence to Judge James Hard about why his life should be spared, his counsel offered none.[8] In contrast, the prosecution presented an abundance of additional aggravating evidence to Judge Hard that the jury had not considered -- 20 victim impact letters, each of them demanding the court's imposition of the death penalty.[9] Many of these letters lobbied for Mr. Brooks' death sentence as the sole means of avenging Ms. Campbell's tragic murder.[10] Everybody present for Mr. Brooks' sentencing knew, as Mr. Brooks' counsel surely did, that the purpose of this victim impact evidence was "to put the heat" on Judge Hard, an elected judge, to sentence Mr. Brooks to death.[11] Judge Hard sentenced Mr.

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[7] (C.R. 96).

[8] (R. 1232).

[9] (R. 1241).

[10] (C.R. 121-138).

[11] (R. 1241).

Brooks to death on November 10, 1993. In doing so, Judge Hard apparently considered the victim impact evidence.[12]

The Alabama Court of Criminal Appeals affirmed on July 3, 1996.[13] On April 25, 1997, this Court affirmed.[14] The United States Supreme Court denied Mr. Brooks' Petition for a Writ of Certiorari on October 6, 1997.[15]

On September 4, 1998, Mr. Brooks filed a petition for post-conviction relief, pursuant to Ala. R. Crim. Pro. 32. He filed amended petitions in July 1999 and in May 2000. A lawyer from Michigan volunteered to represent him. In May 2000 and July 2000, evidentiary hearings were held. On November 15, 2001, the Circuit Court denied his amended petition, and adopted the State's proposed order verbatim.

Mr. Brooks timely appealed to the Alabama Court of Criminal Appeals on December 10, 2001. That court affirmed on April 29, 2005.[16] On August 5, 2005, Mr. Brooks'

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[12] *See* (C.R. 26) (referring to letters received and made part of the record).

[13] *Brooks v. State*, 695 So. 2d 176 (Ala. Crim. App. 1996).

[14] *Ex parte Brooks*, 695 So. 2d 184 (Ala. 1997).

[15] *Brooks v. Alabama*, 522 U.S. 893 (1997).

[16] *Brooks v. State*, 929 So. 2d 491 (Ala. Crim. App. 2005).

application for rehearing was denied. Mr. Brooks filed a petition for writ of certiorari, which was denied by this Court on October 21, 2005.

On November 21, 2005, Mr. Brooks filed a petition for writ of habeas corpus in the Northern District of Alabama. A sole practitioner from Birmingham accepted an appointment to represent Mr. Brooks and filed amended petitions on his behalf on September 29, 2006 and on October 30, 2006. On March 31, 2009, the district court denied the petition without an evidentiary hearing.

Mr. Brooks timely appealed to the United States Court of Appeals for the Eleventh Circuit. On June 27, 2013, the Eleventh Circuit denied relief.[17] On December 11, 2013, Mr. Brooks filed a petition for writ of certiorari in the United States Supreme Court. The petition was denied on March 24, 2014.

III. ARGUMENT

A. THIS COURT SHOULD CONSIDER RECENT UNITED STATES SUPREME COURT PRECEDENT WHICH CALLS INTO QUESTION THE CONSTITUTIONALITY OF ALABAMA'S CAPITAL SENTENCING SCHEME.

[17] *Brooks v. Comm'r*, 719 F.3d 1292 (11th Cir. 2013).

On January 12, 2016, the United States Supreme Court decided *Hurst v. Florida*.[18] There, the question presented was: "Whether Florida's death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of [the Supreme] Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002)."[19] In *Ring*, the Supreme Court held that if a "State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact - no matter how the State labels it - must be found by a jury beyond a reasonable doubt."[20] But, contrary to *Ring*'s jury-sentencing requirement, Florida's capital scheme allows the trial judge to consider and weigh aggravating and mitigating circumstances, independently from the jury's advisory sentencing verdict, and to make the final determination as to whether a capital defendant should be sentenced to death.[21]

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[18] *Hurst v. Florida*, No. 14-7505, 2016 WL 112683, at *3 (U.S. Jan. 12, 2016).

[19] *Hurst v. Florida*, 135 S. Ct. 1531, 191 L. Ed. 2d 558 (2015) (granting certiorari to answer this question).

[20] 536 U.S. at 602.

[21] *Hurst*, No. 14-7505, 2016 WL 112683, at *3.

In *Hurst*, seven justices held that Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring*.[22] In doing so, *Hurst* reaffirmed what *Ring* had already said: "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough."[23]

Hurst described the portions of Florida's statutory sentencing scheme at issue. This description makes clear that the Florida capital sentencing procedure is, in all pertinent parts, virtually identical to Alabama's.

Like Florida, Alabama employs a hybrid procedure in which the jury renders an advisory verdict with the judge responsible for the ultimate sentencing decision.[24] Like Florida, following trial on the question of guilt or innocence, the sentencing judge conducts an evidentiary hearing before the jury on the question of the sentence to

[22] *Id.* at *3. Concurring in the result, Justice Breyer reasoned that Florida's scheme violated the Eighth Amendment.

[23] *Id.*

[24] Ala. Code §13A-5-47(e); *Harris v. Alabama*, 513 U.S. 504, 508 (1995).

be imposed.[25] Like Florida, the jury is instructed by the judge, retires to deliberate, and returns an "advisory verdict."[26] Like Florida, there is no statutory or constitutional requirement that the jury make specific findings of aggravating or mitigating circumstances during this sentencing phase of the capital case.[27]

More importantly, like Florida, the court later makes its own decision, notwithstanding the recommendation of the jury.[28] Like Florida, the trial court must set forth written findings if it imposes a death sentence.[29] And like Florida, the jury's recommendation "is not binding upon the court."[30]

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[25] Ala. Code § 13A-5-46(a).

[26] Ala. Code § 13A-5-46(d).

[27] Ala. Code § 13A-5-46(e); *Adams v. State*, 955 So.2d 1037, 1101 (Ala. Crim. App. 2003); *Boyd v. State*, 715 So.2d 825, 846 (Ala. Crim. App. 1997); *Gaddy v. State*, 698 So.2d 1100, 1143 (Ala. Crim. App. 1995); *Haney v. State*, 603 So.2d 368, 387-388 (Ala. Crim. App. 1991).

[28] Ala. Code § 13A-5-47(a).

[29] Ala. Code § 13A-5-47(d).

[30] Ala. Code § 13A-5-47(e).

Although a jury's recommendation is to be given weight, and a recommendation of life imprisonment without the possibility of parole is to be treated as a mitigating circumstance, its weight in the trial court's decision-making is dependent upon a number of factors, which permit the trial court to override that recommendation. In fact, "the jury's recommendation may be overridden based upon information known only to the trial court and not to the jury when such information can properly be used to undermine a mitigating circumstance."[31] As long as the trial court provides appropriate written justification, the trial court has the discretion to "override" a jury's recommendation of a life without parole sentence.[32]

And most importantly, as in Florida, a capital defendant in Alabama is not sentenced to death unless the trial court has determined that to be the sentence.[33] The jury recommendation is advisory only and does not stand as a sentence, let alone a final one. As with Timothy Hurst,

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[31] *Ex parte Carroll*, 852 So.2d 833, 836 (Ala. 2002).

[32] *Jackson v. State*, 133 So.2d 420, 443 (Ala. Crim. App. 2009).

[33] Ala. Code § 13A-5-47(a).

in the absence of the trial court's fact-findings and imposition of sentence, Christopher Brooks would not have received a death sentence.

In Mr. Brooks' case, the jury voted, 11-1, in favor of an advisory death verdict. Weeks later, the trial judge sentenced him to death after improperly[34] considering aggravating evidence which had not been presented to the jury, and independently evaluating aggravating and mitigating circumstances.[35]

Mr. Hurst was similarly situated. After the jury recommended a death sentence, he was twice sentenced to death based on a trial judge's separate, independent determination that the aggravating circumstances outweighed the mitigating ones.[36] *Hurst* now forbids "a judge [to] increase[] … authorized punishment based on her own factfinding."[37] In so holding, the Supreme Court explicitly

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[34] The Eighth Amendment forbids the admission of "a victim's family members' characterization and opinions about the crime, the defendant, and the appropriate sentence." *Payne v. Tennessee*, 501 U.S. 808, 830 n.2 (1991).

[35] *See* (C.R. 21-32).

[36] *Hurst*, No. 14-7505, 2016 WL 112683, at *4.

[37] *Id.* at *6.

overruled its decisions in *Hildwin v. Florida*[38] and *Spaziano v. Florida*,[39] which had concluded that "the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury."[40] Thus, *Hurst* potentially imperils the constitutionality of Alabama's capital sentencing scheme, which also vests in the trial judge sole discretion for determining whether to impose the death penalty.

Alabama's amicus brief to the United States Supreme Court in *Hurst* evinces its legitimate concerns about the constitutionality of its judicial sentencing scheme. There, Alabama's Solicitor General acknowledged that "[t]hree states – Delaware, Florida, and Alabama – allow a judge to impose a sentence regardless of a jury's recommendation. See Ala. Code § 13A-5-47; Fla. Stat. § 921.141; Del. Code tit. 11, § 4209(d)."[41] Alabama told the Supreme Court that

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[38] *Hildwin v. Florida*, 490 U.S. 638 (1989).

[39] *Spaziano v. Florida*, 468 U.S. 447 (1984).

[40] *Hurst*, No. 14-7505, 2016 WL 112683, at *8.

[41] Brief Of Amici Curiae Alabama and Montana in Support of Respondent at 7, *Hurst v. State of Florida*, 135 S. Ct. 1531 (2015), 2015 WL 4747983.

"*Ring* … left untouched [precedent] holding that judicial sentencing is consistent with the Sixth Amendment."[42] Critically, the Solicitor General repeatedly urged the Court not to "upset established precedent"[43] by overruling the pre-*Ring* cases *Harris v. Alabama*[44] and *Spaziano v. Florida*,[45] which had previously affirmed the constitutionality of judge-sentencing schemes in Alabama and Florida. To that end, Alabama's amicus brief asserted that "Florida and Alabama have relied on this Court's decisions in *Spaziano* and *Harris* to sentence hundreds of murderers in the intervening decades. Some of those murderers have likely already been executed. Others are presently on death row."[46] These arguments recognized that the Supreme Court's rejection of Florida's sentencing scheme and *Spaziano* would mean that Alabama's nearly

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[42] *Id.*

[43] *Id.* at 19.

[44] *Harris v. Alabama*, 513 U.S. 504, 512-513 (1995).

[45] *Spaziano v. Florida*, 468 U.S. 447 (1984).

[46] Brief Of Amici Curiae Alabama and Montana in Support of Respondent at p, *Hurst v. State of Florida*, 135 S. Ct. 1531 (2015), 2015 WL 4747983.

identical scheme would almost certainly fail to meet constitutional standards.

In *Spaziano*, the Supreme Court held that Florida's death penalty statute was constitutional even though it permitted judicial override of a jury's recommended sentence. Spaziano did not allege any constitutional infirmity in his jury sentencing. Rather, he argued that the practice of judicial override itself violated the Eighth Amendment's proscription against cruel and unusual punishments, the Double Jeopardy Clause, the Sixth Amendment, and the Due Process Clause.[47] The Florida scheme was upheld, in part, because jury recommendations are accorded "great weight" by the sentencing judge, which the Supreme Court found ensured that death sentences were not arbitrarily applied.[48]

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[47] *Spaziano*, 468 U.S. at 457.

[48] *Id.* at 465 (citing *Tedder v. State,* 322 So.2d 908, 910 (Fla.1975)); *Harris*, 513 U.S. at 511 (citing *Spaziano*, 468 U.S. at 465) (stating that "the hallmark of the analysis is not the particular weight a State chooses to place upon the jury's advice, but whether the scheme adequately channels the sentencer's discretion so as to prevent arbitrary results.")

The constitutionality of Alabama's current death penalty scheme is dependent entirely upon the continued viability of *Harris*, which itself is dependent entirely upon the survival of *Spaziano*.[49] In *Harris*, the Supreme Court considered an argument that Alabama's advisory jury scheme for capital punishment was "unconstitutional because it does not specify the weight the judge must give to the jury's recommendation and thus permits arbitrary imposition of the death penalty."[50] In concluding that the scheme was constitutional, the Supreme Court relied on its decision in *Spaziano*, in which it had held that Florida's scheme, upon which "Alabama's death penalty statute is based," was constitutional.[51]

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[49] *See Ex parte Harrell*, 470 So. 2d 1309, 1317 (Ala. 1985)("We follow *Spaziano* and hold Alabama's override provision constitutional."); *Woodward v. State*, 123 So. 3d 989, 1056 (Ala. Crim. App. 2011), *as modified on denial of reh'g* (Aug. 24, 2012)("[T]his Court notes that the Constitution of the United States does not prohibit vesting the final sentencing authority in the circuit court. *See Spaziano v. Florida,* 468 U.S. [447 (1984)]. Further, in *Harris v. Alabama,* the Supreme Court of the United States held that Alabama's sentencing standard, which (at that time) required only that the judge consider the jury's advisory opinion, was 'consistent with established constitutional law.' 513 U.S. 504, 511 (1995)").

[50] *Harris*, 513 U.S. at 505.

[51] *Id.* at 508.

Comparing the Alabama and Florida schemes, the *Harris* Court noted that "[t]he two States differ in one important respect," namely that the Florida Supreme Court has interpreted Florida's statute to include a requirement that the trial court give "'great weight' to the jury's recommendation and may not override the advisory verdict of life unless 'the facts suggesting a sentence of death [are] so clear and convincing that virtually no reasonable person could differ.'"[52] The Supreme Court explained, "This distinction between the Alabama and Florida schemes forms the controversy in this case – whether the Eighth Amendment to the Constitution requires the sentencing judge to ascribe any particular weight to the verdict of an advisory jury."[53]

Ultimately, the Supreme Court concluded that the "great weight" requirement grafted onto the statute by the Florida Supreme Court was not constitutionally mandated, and the Supreme Court's expressions of approval of that requirement

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[52] *Id.* at 509 (citing *Tedder*, 322 So.2d at 910) (brackets in original).

[53] *Id.*

in subsequent cases upholding Florida's death penalty scheme did not render Alabama's nearly identical scheme invalid.[54] The Supreme Court concluded its opinion by explaining, "The Constitution permits the trial judge, acting alone, to impose a capital sentence. It is thus not offended when a State further requires the sentencing judge to consider a jury's recommendation and trusts the judge to give it the proper weight."[55]

These holdings in *Harris* are now directly challenged by the Supreme Court's ruling in *Hurst*.

The Supreme Court was correct when, in *Harris*, it described "Alabama's capital sentencing scheme" as "much like that of Florida."[56] Alabama's capital sentencing scheme provides that, after a jury has rendered an advisory sentencing verdict and a presentence investigation report has been prepared,

> (d) Based upon the evidence presented at trial, the evidence presented during the sentencing hearing, and the presentence investigation report and any evidence submitted in connection with it, the trial

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[54] *Id.* at 509-12.

[55] *Id.* at 515. This holding is obviously no longer good law. *See Ring v. Arizona*, 536 U.S. 584, 589 (2002).

[56] *Harris*, 513 U.S. at 508.

court shall enter specific written findings concerning the existence or nonexistence of each aggravating circumstance enumerated in Section 13A-5-49, each mitigating circumstance enumerated in Section 13A-5-51, and any additional mitigating circumstances offered pursuant to Section 13A-5-52. The trial court shall also enter written findings of facts summarizing the crime and the defendant's participation in it.

(e) In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh the mitigating circumstances it finds to exist, and in doing so the trial court shall consider the recommendation of the jury contained in its advisory verdict, unless such verdict has been waived pursuant to Section 13A-5-46(a) or 13A-5-46(g). While the jury's recommendation concerning sentence shall be given consideration, it is not binding upon the court.[57]

The death penalty statute declared unconstitutional in *Hurst*, in relevant part, provides,

Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be

[57] Ala. Code § 13A-5-47.

> supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.[58]

In an attempt to save its statute, Florida argued that the jury's advisory sentencing recommendation "'necessarily included a finding of an aggravating circumstance,'" which "qualified Hurst for the death penalty under Florida law, thus satisfying *Ring*."[59] Rejecting Florida's argument, the Supreme Court explained,

> The State fails to appreciate the central and singular role the judge plays under Florida law . . . the Florida sentencing statute does not make a defendant eligible for death until "findings *by the court* that such person shall be punished by death." The trial court *alone* must find "the facts . . . [t]hat sufficient aggravating circumstances exist" and "[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances." "[T]he jury's function under the Florida death penalty statute is advisory only." The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires.[60]

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[58] Fla. Stat. Ann. § 921.141.

[59] *Hurst*, No. 14-7505, 2016 WL 112683, at *6.

[60] *Id.* (internal citations omitted) (emphases and brackets in original).

Again, Alabama is no different from Florida in most respects. Here, as in Florida, the statute permits the trial judge, acting alone, to impose the death penalty.[61] Nor does the jury's advisory sentencing verdict save the scheme because here, as in Florida, the judge decides the death sentence "[n]otwithstanding the recommendation of a majority of the jury."[62] Like Florida, Alabama "does not require the jury to make the critical findings necessary to impose the death penalty."[63] As noted by the Supreme Court in *Harris*, the only meaningful difference between the Florida and Alabama schemes is that Alabama's accords much

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[61] *See Harris v. State*, 632 So. 2d 503, 538 (Ala. Crim. App. 1992) *aff'd sub nom. Ex parte Harris*, 632 So. 2d 543 (Ala. 1993), *on reh'g* (Oct. 29, 1993) *aff'd sub nom. Harris v. Alabama*, 513 U.S. 504, 115 S. Ct. 1031, 130 L. Ed. 2d 1004 (1995)("Pursuant to § 13A-5-47(e), *Code of Alabama* 1975, '[t]he trial court and not the jury is the sentencing authority.'")

[62] Ala. Code § 13A-5-47.

[63] *Hurst*, No. 14-7505, 2016 WL 112683, at *5 (U.S. Jan. 12, 2016). *See, e.g.*, *Ex parte Roberts*, 735 So. 2d 1270, 1279 (Ala. 1999) ("Roberts does not cite any authority, nor have we been able to find any, for the proposition that if an appellate court remands a case for a new penalty-phase hearing, that hearing must be conducted before a jury, not before the trial court only.")

less credence to the jury's advisory verdict than Florida does.[64]

Also rejecting Florida's appeal to *stare decisis*, the Supreme Court, "expressly overrule[d] *Spaziano* and *Hildwin*[65] . . . to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty."[66]

B. A STAY OF EXECUTION IS WARRANTED.

In conclusion, the Supreme Court held, "The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's factfinding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating

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[64] *Roberts v. Comm'r, Alabama Dep't of Corr.*, 677 F.3d 1086, 1096 (11th Cir. 2012)(noting that "Alabama law does not require the judge to follow the jury's recommendation no matter the number of jurors recommending life").

[65] In *Hildwin*, the Supreme Court, relying on its holding in *Spaziano*, rejected a claim that Florida's sentencing scheme violates the Sixth Amendment insofar as it allows the trial court to make the written findings necessary to impose a death sentence. *Hildwin*, 490 U.S. at 640.

[66] *Hurst*, No. 14-7505, 2016 WL 112683, at *8.

circumstance, is therefore unconstitutional."[67] This ruling directly impacts both *Harris* and prior rulings of this Court.[68]

Justice Sotomayor, who authored the majority's opinion in *Hurst*, also recently dissented in the denial of certiorari in *Woodward*,[69] an Alabama case. There, Justice Sotomayor forewarned that Alabama's capital sentencing scheme was incompatible with *Ring*. She reasoned that "[t]he very principles that animated our decisions in *Apprendi* and *Ring* call into doubt the validity of Alabama's capital sentencing scheme."[70]

Mr. Brooks is one of those "[o]thers . . . presently on death row" to which the Solicitor General's amicus brief referred. He is presently scheduled to be executed on January 21, 2016, under a capital sentencing scheme that is indistinguishable from the one that the Supreme Court just

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[67] *Id.* at *9.

[68] *See Ex parte Waldrop*, 859 So. 2d 1181, 1190 (Ala. 2002)("*Ring* and *Apprendi* do not require that a jury weigh the aggravating circumstances and the mitigating circumstances.")

[69] *Woodward v. Alabama*, 134 S. Ct. 405, 410 (2013) (Sotomayor, J., dissenting from denial of cert.).

[70] *Id.*

declared unconstitutional. Given this Court's statutory mandate to interpret and reinterpret Alabama's death penalty scheme to render it constitutional[71] and the relief available to those already sentenced under an unconstitutional scheme,[72] it should grant Mr. Brooks' request for a stay of his execution[73] pending this Court's actions in reinterpreting Alabama's capital sentencing scheme to cure, if possible, the constitutional infirmities identified in *Hurst*.[74]

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[71] Ala. Code § 13A-5-58 ("This article shall be interpreted, and if necessary reinterpreted, to be constitutional.").

[72] Ala. Code § 13A-5-59 ("It is the intent of the Legislature that if the death penalty provisions of this article are declared unconstitutional and if the offensive provision or provisions cannot be reinterpreted so as to provide a constitutional death penalty . . . the defendants *who have been sentenced to death* under this article shall be re-sentenced to life imprisonment without parole.") (emphasis added).

[73] *See Ex parte Nelson*, 562 So. 2d 310 (Ala. 1989) (granting motion for stay of execution).

[74] To do so, would again be following Florida's lead. In *Lambrix*, a petitioner with a February 11, 2016, execution date, the Florida Supreme Court, on the day *Hurst* was issued, ordered briefing on the "applicability of *Hurst v. Florida*, No. 14-7505, 2016 WL 112683 (Jan. 12, 2016), to each of Petitioner's first-degree murder convictions and sentences of death. Specifically, the Respondent shall address the retroactivity of *Hurst*, the effect of *Hurst* in light of the aggravating factors found by the trial court in Lambrix's case, and whether any error in Lambrix's case is harmless." *Lambrix v. Jones*, No.: SC16-56 (Fla. Jan. 12, 2016).

WHEREFORE, Mr. Brooks respectfully requests that this Court temporarily stay his execution currently scheduled for January 21, 2016, direct the parties to present briefs on the applicability of *Hurst*, and undertake a thorough consideration of *Hurst*'s impact on Alabama's capital sentencing scheme.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2016, I electronically filed the foregoing pleading with the Clerk of the Court using the ACIS system, a copy of the foregoing pleading will be hand delivered to the following counsel:

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