No.

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER EUGENE BROOKS,
Petitioner,

v.

ALABAMA,
Respondent.

On Petition for a Writ of Certiorari
to the Alabama Supreme Court

PETITION FOR WRIT OF CERTIORARI

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January 19, 2016

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CAPITAL CASE – EXECUTION DATE SET
JANUARY 21, 2016

QUESTIONS PRESENTED

1. Does Alabama's advisory jury death sentencing scheme violate the Sixth Amendment?

2. Did the Alabama Supreme Court correctly decide the issue of whether *Hurst v. Florida*[1] applies retroactively?

[1] No. 14-7505, 2016 WL 112683 (U.S. Jan. 12, 2016).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Christopher Brooks, respectfully requests that this Court grant his writ of *certiorari* to review the judgment of the Alabama Supreme Court, which concluded that this Court's opinion in *Hurst v. Florida*,[2] finding Florida's death sentencing scheme unconstitutional was not applicable to Alabama's virtually identical scheme. He also asks that should this Court question its jurisdiction to hear this case, that it grant his separately requested motion for stay of execution and hold his case for determination of the jurisdictional issue in *Montgomery v. Louisiana*.[3]

OPINIONS BELOW

The decision of the Alabama Supreme Court is unreported and is included in Petitioner's Appendix.[4]

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[2] 2016 WL 112683 (Jan. 12, 2016).

[3] No. 14-280.

[4] Pet.App.1a.

JURISDICTION

The judgment of the Alabama Supreme Court was filed on January 19, 2016. The Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

RELEVANT STATUTORY PROVISIONS

Alabama Code § 13A-5-47(d) and (e) provide:

> (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 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.

STATEMENT OF THE CASE

On December 31, 1992, while conducting a welfare check, Homewood Police discovered Jo Deann Campbell's partially clothed body concealed beneath her bed. Ms. Campbell had been sexually assaulted and beaten to death and her belongings, including her credit card, car, and other items, taken. Christopher 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. 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 a rape, a robbery, and a burglary.[5]

[5] Ala. Code 1975, § 13A–5–40(a).

Mr. Brooks, who was 19 at the time of the crime, went to trial in the Jefferson County Circuit Court on September 20, 1993, only nine months after his arrest. 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. Later, after considering virtually no mitigating evidence and two aggravating circumstances, the jury recommended a death sentence by an 11-1 margin.

On November 10, 1993, at the judicial sentencing hearing, which would determine whether Mr. Brooks was sentenced to death or life imprisonment without parole, Mr. Brooks' counsel had the opportunity to present more mitigating arguments and evidence to Judge James Hard about why his life should be spared. They offered none.

In contrast, the prosecution presented an abundance of aggravating evidence to Judge Hard that the jury had not considered -- 20 victim impact letters, each of them demanding that the court sentence Mr. Brooks to death. Many of these letters

lobbied for a death sentence as the sole means of avenging Ms. Campbell's tragic murder. 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. Judge Hard did just that, sentencing Mr. Brooks to death on November 10, 1993. In doing so, Judge Hard apparently considered the victim impact evidence.

The Alabama Court of Criminal Appeals affirmed Mr. Brooks' conviction and sentence on July 3, 1996.[6] On April 25, 1997, the Alabama Supreme Court affirmed.[7] This Court denied Mr. Brooks' Petition for a Writ of Certiorari on October 6, 1997.[8]

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

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

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

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

2000, evidentiary hearings were held. On November 15, 2001, the Circuit Court adopted the State's proposed order verbatim and denied his amended petition.

Mr. Brooks timely appealed that decision to the Alabama Court of Criminal Appeals on December 10, 2001. That court affirmed on April 29, 2005.[9] The Alabama Supreme Court declined to review the case.

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.[10] On December 11, 2013, Mr. Brooks filed a

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

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

petition for writ of certiorari in this Court. The petition was denied on March 24, 2014.

REASONS FOR GRANTING THE WRIT

Certiorari is necessary because the Alabama Supreme Court's refusal to grant Mr. Brooks relief conflicts with this Court's opinion in _Hurst_ and to determine whether the Alabama Supreme Court correctly determined that _Hurst_ did not apply retroactively to Mr. Brooks. Further, a decision on this petition should be held until this Court resolves the question of whether it has jurisdiction to review the decision of the Alabama Supreme Court.

A. Alabama's use of advisory juries in its capital-sentencing scheme violates _Hurst._

In *Hurst*, the Court made abundantly clear that a death penalty sentencing scheme that used advisory juries could not withstand constitutional scrutiny.[11] Despite this, the Alabama Supreme Court refused to acknowledge the unconstitutionality of Mr. Brooks' sentence and refused to grant him relief or even to stay his execution to allow for further briefing on the question. This Court's opinion in *Hurst* holds that the Sixth Amendment does not allow advisory juries in death penalty cases. Alabama's

[11] *Hurst*, No. 14-7505, 2016 WL 112683, at *9.

system uses just that, and the system must be declared unconstitutional.

In *Hurst*, seven justices held that Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring.*[12] 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."[13]

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.[14] Like Florida, following trial on

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

[13] *Id.*

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

the question of guilt or innocence, the sentencing judge conducts an evidentiary hearing before the jury on the question of the sentence to be imposed.[15] Like Florida, the jury is instructed by the judge, retires to deliberate, and returns an "advisory verdict."[16] 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.[17]

More importantly, like Florida, the court later makes its own decision, notwithstanding the recommendation of the jury.[18] Like Florida, the trial court must set forth written findings if it imposes

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[15] Ala. Code § 13A-5-46(a).

[16] Ala. Code § 13A-5-46(d).

[17] 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).

[18] Ala. Code § 13A-5-47(a).

a death sentence.[19] And like Florida, the jury's recommendation "is not binding upon the court."[20]

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."[21] 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.[22]

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.[23] The jury recommendation is advisory only and does not stand as a sentence, let alone a final one. As with Timothy Hurst, in the absence of the trial court's

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[19] Ala. Code § 13A-5-47(d).

[20] Ala. Code § 13A-5-47(e).

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

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

[23] Ala. Code § 13A-5-47(a).

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[24] considering aggravating evidence which had not been presented to the jury, and independently evaluating aggravating and mitigating circumstances.

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.[25] *Hurst* now forbids "a judge [to] increase[] … authorized punishment based on her own factfinding."[26] In so holding, the Supreme Court explicitly overruled its decisions in *Hildwin v.*

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[24] 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).

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

[26] *Id.* at *6.

Florida[27] and *Spaziano v. Florida*,[28] which 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."[29] 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)."[30]

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

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

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

[30] 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.

Alabama told the Supreme Court that "*Ring* … left untouched [precedent] holding that judicial sentencing is consistent with the Sixth Amendment."[31] Critically, the Solicitor General repeatedly urged the Court not to "upset established precedent"[32] by overruling the pre-*Ring* cases *Harris v. Alabama*[33] and *Spaziano v. Florida,*[34] which had previously affirmed the constitutionality of judge-sentencing schemes in Alabama and Florida. To that end, Alabama's amicus brief asserted: "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."[35] These arguments recognized that the Supreme Court's rejection of Florida's sentencing scheme and

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[31] *Id.*

[32] *Id.* at 19.

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

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

[35] 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.

Spaziano would mean that Alabama's nearly 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.[36] 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.[37]

The constitutionality of Alabama's current death penalty scheme is dependent entirely upon the continued viability of

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

[37] *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.")

Harris, which itself is dependent entirely upon the survival of *Spaziano.*[38] In *Harris*, this 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."[39] In concluding that the scheme was constitutional, this 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.[40]

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

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[38] *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)").

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

[40] *Id.* at 508.

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.'"[41] The 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."[42]

Ultimately, the Court concluded that the "great weight" requirement grafted onto the statute by the Florida Supreme Court was not constitutionally mandated, and later expressions of approval of that requirement in subsequent cases upholding Florida's death penalty scheme did not render Alabama's nearly identical scheme invalid.[43] The *Harris* Court concluded its opinion by explaining, "The Constitution permits the trial judge, acting

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

[42] *Id.*

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

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."[44]

This Court's ruling in *Hurst* directly challenges these holdings in *Harris*. In *Harris*, this Court described "Alabama's capital sentencing scheme" as "much like that of Florida."[45] It was correct. 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 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.
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> (e) In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to

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

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

> 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.[46]

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 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.[47]

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[46] Ala. Code § 13A-5-47.

[47] Fla. Stat. Ann. § 921.141.

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*."[48] Rejecting Florida's argument, this Court held:

> 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.[49]

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.[50] Nor does the jury's

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

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

[50] *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.'")

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."[51] Like Florida, Alabama "does not require the jury to make the critical findings necessary to impose the death penalty."[52] As noted by the *Harris* Court, the only meaningful difference between the Florida and Alabama schemes is that Alabama's accords much less credence to the jury's advisory verdict than Florida does.[53]

Also rejecting Florida's appeal to *stare decisis*, this Court "expressly overrule[d] *Spaziano* and *Hildwin*[54] . . . to the extent they allow a sentencing judge to find an aggravating

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[51] Ala. Code § 13A-5-47.

[52] *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.")

[53] *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").

[54] 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.

circumstance, independent of a jury's fact-finding, that is necessary for imposition of the death penalty."[55]

The conclusion of *Hurst* is clear and simple: "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional."[56] Alabama's sentencing scheme is identical to Florida's in that regard. In Alabama, a defendant may not be sentenced to death until and unless a judge finds the existence of an aggravating circumstance. Therefore, under *Hurst*, Alabama's death sentencing scheme is unconstitutional, and this Court's decision in *Harris v. Alabama* must be overruled.

B. *Certiorari* is necessary to decide the important question of whether *Hurst* applies retroactively but Mr. Brooks' execution should be stayed and the petition held until this Court resolves the jurisdictional question raised in *Montgomery v. Louisiana*.[57]

The second question posed by this case is whether *Hurst* applies retroactively to invalidate Mr. Brooks' death sentence. In

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

[56] *Id.* at *9.

[57] No. 14-280.

his motion for relief from unconstitutional sentence in the Alabama Supreme Court, Mr. Brooks argued that *Hurst* rendered Alabama's sentencing scheme, and therefore his sentence, unconstitutional. Alabama opposed Mr. Brooks' motion primarily on the ground that this Court's decision in *Hurst* did not apply to Alabama. It also briefly argued that it did not apply retroactively to inmates like Mr. Brooks who were no longer on direct appeal. The Alabama Supreme Court denied Mr. Brooks' motion in a single sentence order.

Mr. Brooks maintains that the Court's decision in *Hurst* does apply retroactively to him because it invalidates Alabama's death sentencing system, and fundamentally affects the fairness of death-penalty sentencing proceedings in Alabama. But there is a preliminary question that must be answered before that question is answered. *Teague v. Lane*,[58] and the case that Alabama cited, *Schiro v. Summerlin*,[59] treated the retroactive application of this Court's decisions *to habeas corpus petitioners*.

[58] 489 U.S. 288 (1989).

[59] 542 U.S. 348 (2004).

That is not the procedural posture this case is in. This case comes before the Court on *certiorari* from a final decision of the highest court of a state.

In *Montgomery v. Louisiana*,[60] argued before this Court on October 13, 2015, the Court asked the parties to brief and argue the following question:

> Do we have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to our decision in Miller v. Alabama, 567 U. S. ____ (2012)?[61]

That identical question is before this Court in this case. Until that jurisdictional question is answered, the Court should grant Mr. Brooks his separately requested stay and hold this *certiorari* petition until *Montgomery* resolves the jurisdictional issue.[62]

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[60] No. 14-280.

[61] 135 S.Ct. 1546 (2015).

[62] If the Court determines in *Montgomery* that it does have jurisdiction to resolve the issue, Brooks would request time to file a supplemental brief in support of his petition for writ of *certiorari* on the question of the retroactive application of *Hurst*.

CONCLUSION

For the forgoing reasons, Christopher Brooks' Petition for Writ of Certiorari should be granted, the judgment of the Alabama Supreme Court vacated, and the cause remanded for further proceedings. In the alternative, Mr. Brooks requests that this Court grant his separately requested stay and hold consideration of this petition pending resolution of *Montgomery v. Louisiana.*

Respectfully submitted,

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