

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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MOTION TO PROHIBIT DEATH PENALTY
WITHOUT UNANIMOUS JURY VERDICT
BEYOND A REASONABLE DOUBT

Joe Client respectfully moves this Court to impose a sentence of life imprisonment without parole unless the jury finds the existence of at least one aggravating circumstance unanimously and beyond a reasonable doubt; that the aggravating circumstance(s) outweigh(s) the mitigating circumstances unanimously and beyond a reasonable doubt; and returns a unanimous verdict in favor of a death sentence. In support of this motion, Mr. Client submits the following:

1. Mr. Client has been charged with capital murder and the State is seeking the death penalty.

2. The Sixth Amendment requires that “each fact necessary to impose a sentence of death” must be found by a unanimous jury beyond a reasonable doubt. Hurst v. Florida, 136 S. Ct. 616, 619 (2016); see also Ramos v. Louisiana, 140 S. Ct. 1390, 1396 (2020) (“This Court has, repeatedly and over many years, recognized that the Sixth Amendment requires unanimity.”); Ring v. Arizona, 536 U.S. 584, 589 (2002) (capital defendants have Sixth Amendment right to “a jury determination of any fact on which the legislature conditions an increase in their maximum punishment”); Apprendi v. New Jersey, 530 U.S. 466, 494 (2000) (any “required finding [that] expose[s] the defendant to a greater punishment than that authorized by the jury’s guilty verdict” must be submitted to jury and proved beyond a reasonable doubt).

3. Under Alabama’s statute, a death sentence cannot be imposed unless the jury finds that one or more aggravating circumstances exist and that those aggravating circumstances outweigh the mitigating circumstances. Ala. Code § 13A-5-46(e). As such, the existence of each aggravating circumstance and whether those circumstance(s) outweigh the mitigating circumstances must be found by a unanimous jury unanimously and beyond a reasonable doubt. See Hurst, 136 S. Ct. at 619 (sentencing scheme unconstitutional where

jury does not find whether “sufficient aggravating circumstances existed to justify imposing the death penalty”); *id.* at 622 (whether “sufficient aggravating circumstances exist” and “there are insufficient mitigating circumstances to outweigh the aggravating circumstances” are findings necessary for defendant to be sentenced to death).

4. Alabama’s death penalty scheme permits the jury to return a non-unanimous verdict in favor of the death penalty, Ala. Code § 13A-5-46(f), which fails to ensure that the death penalty is not imposed without a unanimous jury vote as required by the Constitution. See *Ramos*, 140 S. Ct. at 1399 (“[T]his Court has said 13 times over 120 years that the Sixth Amendment does require unanimity[.]”); *Ring*, 536 U.S. at 610 (Scalia, J., concurring) (explaining that *Ring* majority’s holding mandates that facts increasing punishment be found by “a unanimous jury . . . beyond a reasonable doubt”); *Johnson v. Louisiana*, 406 U.S. 356, 364-65 (1972) (finding that a unanimous verdict is a legitimate requirement for a death case given “the severity of the punishment”); see also, *Rauf v. State*, 145 A.3d 430, 433-34 (Del. 2016) (in light of *Hurst*, finding that Sixth Amendment requires jury unanimity at sentencing phase of capital trial).

5. The United States Supreme Court has consistently held that “there is a significant constitutional difference between the death penalty and lesser punishments,” *Beck v. Alabama*, 447 U.S. 625, 637 (1980), and the Eighth Amendment demands that the administration of the death penalty must reflect “the evolving standards of decency that mark the progress of a maturing society,” *Kennedy v. Louisiana*, 554 U.S. 407, 446 (2008) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)). “[T]his principle requires that use of the death penalty be restrained,” the Court has explained, and “must be reserved for the worst of crimes and limited in its instances of application.” *Id.* at 446-47. Such restraints include “heightened reliability . . . in the determination whether the death penalty is appropriate,” *Sumner v. Shuman*, 483 U.S. 66, 72 (1987), and a requirement that the class of people who may be sentenced to death is narrowed to include only the most culpable individuals, *Zant v. Stephens*, 462 U.S. 862, 876-77 (1983). To impose a death sentence where the jury does not return a unanimous verdict in favor of death would violate the Eighth Amendment.

7. When assessing the constitutionality of a particular criminal punishment practice under the Eighth Amendment, the Supreme Court looks to whether state legislative and sentencing trends evince a national consensus against it. See, e.g., *Kennedy*, 554 U.S. at 422-26; *Roper v. Simmons*, 543 U.S. 551, 564-67 (2005); *Atkins v. Virginia*, 536 U.S. 304, 312-17 (2002). Alabama is the only state — out of twenty-eight death penalty states and the federal and military justice systems — where the standard sentencing procedure does not require that the jury return a unanimous verdict in support of death before a death

sentence may be imposed.¹

8. Given that the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures,” Atkins, 536 U.S. at 312 (quoting Penry v. Lynaugh, 492 U.S. 302, 331 (1989)) (internal quotation marks omitted), Alabama’s outlier status in this respect is evidence that its unusual practice is contrary to the national consensus. See Ramos, 140 S. Ct. at 1393 (holding non-unanimous guilt verdicts, in use by only two states, violate Sixth Amendment); Burch v. Louisiana, 441 U.S. 130, 138 (1979) (in Sixth Amendment context, noting that only two states allowed non-unanimous jury verdicts in six-person jury cases and finding that “this near-uniform judgment of the Nation provides a useful guide in delimiting the line between those jury practices that are constitutionally permissible and those that are not”). That only four other states allow imposition of a death sentence without a unanimous jury verdict in favor of death and that such sentences are exceedingly rare evince a clear consensus against this practice. Under the Supreme Court’s Sixth and Eighth Amendment jurisprudence, this is powerful evidence that Alabama’s practice falls outside the line “delimiting . . . between those jury practices that are constitutionally permissible and those that are not.” Id.

9. Further, the consensus requiring unanimity to impose a death sentence is consistent with the history of right to trial by jury, which in Alabama has traditionally required a unanimous verdict. See Opinion of the Justices, 692 So. 2d 115, 115-23 (Ala. 1997) (describing Alabama constitutional convention’s rejection of proposal for non-unanimous jury verdicts and concluding that “if such a radical restructuring of the judicial process to authorize less than unanimous verdicts is deemed wise or necessary, it must be accomplished by an amendment to Alabama’s Constitution”); see also Ramos, 140 S.Ct. at

¹In Nebraska, a three-judge panel determines sentence, and in Montana the trial judge determines sentence. Neb. Rev. Stat. § 29-2521; Mont. Code § 46-18-305. Two other states allow imposition of a death sentence without a unanimous jury verdict in only the narrow category of cases where a jury is deadlocked. See Ind. Code § 35-50-2-9(e)-(f); Mo. Stat. § 565.030(4). As of January 2021, only three people are on death row in Missouri and one in Indiana as a result of those provisions. See State v. Wood, 580 S.W.3d 566, 583 (Mo. 2018); State v. Shockley, 410 S.W.3d 179, 185-86 (Mo. 2013) (en banc); State v. McLaughlin, 265 S.W.3d 257, 261-62 (Mo. 2008) (en banc); Holmes v. State, 671 N.E.2d 841, 845 (Ind. 1996). In Missouri, one of these three death sentences has been vacated by the federal district court because it was based on a finding — specifically, that the aggravating circumstances in the case were not outweighed by the mitigating circumstances — that was made by the trial judge rather than the jury. McLaughlin v. Steele, 173 F. Supp. 3d 855, 890, 896-97 (E.D. Mo. 2016).

1395-97, 1401-02 (by ratification of Sixth Amendment, “unanimous verdicts had been required for about 400 years”); Apodaca v. Oregon, 406 U.S. 366, 371 (1972) (Powell, J., concurring) (“At the time the Bill of Rights was adopted, unanimity had long been established as one of the attributes of a jury conviction at common law.”). Because the jury’s sentence verdict is now binding, permitting a death sentence without a unanimous verdict in favor of that punishment would violate Section 11 of the Alabama Constitution.

10. Accordingly, if Mr. Client is convicted of the capital offense with which he has been charged, the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law require that this Court impose a sentence of life imprisonment without parole if the jury returns any sentencing verdict that is not a 12-0 verdict in favor of the death penalty.

For these reasons, Mr. Client respectfully requests that this Court:

- a. instruct the jurors that to return a verdict of death they must first find that an aggravating circumstance exists unanimously and beyond a reasonable doubt and then find that the aggravating circumstance(s) outweigh mitigating circumstances unanimously and beyond a reasonable doubt;
- b. instruct the jurors that to return a verdict of death they must unanimously vote in favor of the death penalty;
- c. enter a sentence of life imprisonment without parole unless the jury finds that an aggravating circumstance exists unanimously and beyond a reasonable doubt and that the aggravating circumstances outweigh mitigating circumstances unanimously and beyond a reasonable doubt; and
- d. enter a sentence of life imprisonment without parole if the jury returns a non-unanimous vote with respect to Mr. Client’s sentence.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 01/07/2021]