

IN THE CIRCUIT COURT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CLERK NUMBER: 1709CF003249C
DIVISION: E

LEONARD PATRICK GONZALEZ, JR.,
Defendant.

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**MOTION FOR RECONSIDERATION IN LIGHT OF THE DECISION IN
STATE v. POOLE**

COMES NOW, by and through the undersigned Assistant State Attorney, and moves this Honorable Court to reconsider the order granting the defendant a new penalty phase and conduct further proceedings in accordance with the latest decision in State v. Poole, SC18-245 (2020):

On May 23, 2017, this Honorable Court set aside the death sentences in Count One and Count Two and ordered a new penalty phase. The rationale for this decision was based on the Florida Supreme Court's decision in Hurst. On January 23, 2020, the Florida Supreme Court issued their decision in State v. Poole (Attachment A). In this decision, the Supreme Court receded from their earlier Hurst decision and held that the jury is only required to unanimously find the existence of statutory aggravating circumstance beyond a reasonable doubt.

The Florida Supreme Court specified that Florida Statue 921.141(3) requires findings of eligibility and selection for the death penalty. The eligibility decision is one that a jury must find, that being the existence of an aggravated circumstance. Selection is a decision that the court concluded can be constitutionally made by a Judge.

Specifically, the Court states in Poole that:

“Neither *Hurst v. Florida*, nor the Sixth or Eighth amendment, nor the Florida Constitution mandates that the jury make the section 941.12(3)(b) selection finding or that the jury recommend a sentence of death”

The Court, in reviewing Poole, found that he had been convicted of First Degree Murder and also found guilty of the crimes of Attempted First Degree Murder, Sexual Battery, Armed Burglary and Armed Robbery by a jury. The Florida Supreme Court reversed the trial Court’s order vacating the death sentence because the jury had unanimously found the existence of a statutory aggravating circumstance. They remanded the case back to the trial court for Poole’s sentence to be reinstated.

The Poole decision specified that constitutionally all that is required is a jury finding of the existence of a statutory aggravating circumstance which makes the defendant eligible for death.

Accordingly, in the Gonzalez case, the defendant was convicted by an unanimous jury verdict of three (3) separate counts (Attachment B).

The Gonzalez jury was instructed to make such a finding only if those charges were proved beyond a reasonable doubt (Attachment C). In this case, the aggravating circumstances were:

1. The defendant was previously convicted of another capital felony, or a felony involving the use or threat of violence to the person.
2. The capital felony was committed while the defendant was engaged in the commission of or an accomplice in the commission of a robbery.

These aggravated circumstances were established by the jury’s verdict in Count one and Count two (First Degree Murder of Byrd and Melanie Billings) and by the verdict in Count three (Home Invasion Robbery).

The new decision in Poole makes it clear that the constitutional requirements were fulfilled in the Gonzalez case. A jury made the instant requisite, unanimous findings of the existence of aggravating circumstances.

Additionally, this Court, carefully considering the evidence, made a constitutionally proper selection decision in imposing a death sentence.

Based upon this new decision, the State moves this Honorable Court to reconsider its previous Order vacating the death sentence and reinstate the death sentence based upon the new Poole decision.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been forwarded to **CLIFTON W. WILSON, JR**, Office of Regional Conflict Counsel and **RICHARD G. CURREY JR**, Office of Regional Conflict Counsel, Attorneys for defendant, P.O. Box 12273, Pensacola, FL 32591 by electronic service this 30th day of January, 2020.



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