AMERICAN CONSTITUTION SOCIETY

THE FLORIDA SUPREME COURT: A REVIEW OF 2023 AND A LOOK AHEAD TO 2024
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FLORIDA SUPREME COURT 2023 PERSPECTIVE ON CRIMINAL LAW

A. Criminal Law Cases of Interest.

Alahad v. State, 362 So. 3d 190 (Fla. June 1, 2023) (Labarga, J.).

Alahad, charged with a number of crimes, filed a pretrial motion to suppress eyewitness testimony obtained during a police show-up. He argued that the show-up, a practice at which law enforcement presents only one suspect to an eyewitness for identification, violated his due process rights because it was unnecessarily suggestive and led to a substantial likelihood of irreparable misidentification by the eyewitness. The trial court denied the motion and the Fourth District Court of Appeal affirmed.

The Supreme Court approved the Fourth District's decision. Resolving inconsistent case law in the area of the proper standard of review for rulings on out-of-court identifications, the Court held that *abuse of discretion* (not *de novo*) is the proper standard for reviewing a ruling on a motion to suppress an eyewitness's out-of-court identification.

Arbelaez v. State, SC2015-1628 & SC2018-039222-0210 (Fla. May 25, 2023) (per curiam) (Labarga, J., dissenting).

The Court denied the sixth successive postconviction motion for this death row inmate finding that his "intellectual disability claim" cannot be applied retroactively in light of *Phillips v. State*, 299 So. 3d

1013, 1024 (Fla. 2020) (receding from *Walls v. State*, 213 So. 3d 340 (Fla. 2016), and holding that *Hall v. Florida*, 572 U.S. 701 (2014), prohibiting the execution of intellectually disabled inmates, is not retroactive to cases for which there has already been a finding that the defendant is not intellectually disabled).

Justice Labarga, who dissented from the non-retroactivity ruling of *Phillips v. State*, issued his "dissent to the majority's decision to the extent that it affirms the summary denial of Arbelaez's successive motion for postconviction relief."

Barwick v. State, SC2023-0531 (Fla. April 28, 2023) (per curiam) (Labarga, J., concurring with opinion).

The Court affirmed the summary denial of a death row inmate's second successive motion for postconviction relief and denied a requested stay of execution set for May 3, 2023. The 1986 murders resulting in a sentence of death in 1987, but the convictions and sentences were vacated due to a *Neil* violation during jury selection. *Barwick v. State*, 547 So. 2d 612 (1989). On retrial, the jury again convicted the defendant and unanimously recommended the death penalty. The Court affirmed on appeal, finding that although the trial court erred in applying the "cold, calculated, and premeditated aggravator, the error was harmless beyond a reasonable doubt, …" *Barwick v. State*, 660 So. 2d 685, 696-697 (Fla. 1995).

In his postconviction motion reviewed by the Court, the defendant raised newly discovered evidence asserting the death penalty is categorically unconstitutional as to persons who were under age twenty-one when they committed the offense, that the scheduling of the execution violated his right to due process, and that his severe neuropsychological disorder prevented his execution on Eighth Amendment grounds.

The Court rejected the defendant's claim that the compressed warrant litigation schedule resulted in the denial of his rights to due process and effective assistance of counsel, concluding that "post-warrant litigation is arduous, … [but that] none of the obstacles identified by Barwick resulted in a denial of due process." The Court found that recent medical and scientific literature regarding

adolescent brain development" as a constitutional obstacle to the death penalty does not constitute newly discovered evidence warranting the untimely and successive postconviction review. Finally, the Court applied existing precedent in concluding that the intellectual disability claim was "procedurally barred, untimely, and without merit."

Justice Labarga concurred in the denial of postconviction relief with a caution to the Court that "I am extremely concerned by the recent pace of death warrants and the speed with which the parties and involved entities must carry out their respective duties."

Bevel v. State, SC2022-0210 (Fla. October 26, 2023) (per curiam) (Labarga, J., dissenting).

The Court reviewed Bevel's two death sentences that were imposed by the trial court for the second time following the Court's grant of postconviction relief and remand for a new penalty phase after concluding counsel was ineffective during the penalty phase. *Bevel v. State*, 221 So. 3d 1168, 1185 (Fla. 2017). Noting that five (5) issues were raised on appeal, the Court declined to find reversible error. The Court found competent, substantial evidence supporting the trial court's rejection of the "extreme mental or emotional mitigator" presented by defense expert testimony. The Court also approved the use of the standard jury instructions on mitigation and aggravation. The Court upheld the ruling of the trial court precluding any argument to the jury about the proportionality of the potential sentence, concluding the jury's role "is not to compare the facts of the case before it to the facts of other cases or to compare the aggravation and mitigation applicable to the defendant before it to the aggravation and mitigation applicable to other defendants."

Justice Labarga, having previously dissented to the elimination of comparative proportionality review in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), reiterated his disagreement with the Court's abandonment of the "decades-long practice of comparative proportionality review …"

City of Tallahassee v. Florida Police Benevolent Assn., SC21-0651 (Fla. November 30, 2023) (Couriel, J.).

In a case of first impression interpreting the Florida Constitutional provision known as Marsy's Law (Art. I, Section 16(b)-(e), Fla. Const.), the Supreme Court declared that police officers acting in an official capacity are not Marsy's Law victims entitled to remain anonymous. The Marsy's Law amendment enumerates certain rights of crime victims "to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents." Art. I, § 16(b), Fla. Const.

Construing the constitutional text of Marsy's Law, the Supreme Court held:

> Marsy's Law guarantees to no victim—police officer or otherwise—the categorical right to withhold his or her name from disclosure. No such right is enumerated in the text of article I, section 16(b) of the Florida Constitution. Nor, as a matter of structure, would such a right readily fit with two other guarantees contained in article I: the right expressed in section 16(a) of the criminally accused "to confront at trial adverse witnesses," and the right found in section 24(a) of every person to inspect or copy public records.

Employing the traditional norms of constitutional and statutory interpretation, Justice Couriel wrote for the unanimous Court that "Marsy's Law does not guarantee to crime victims a generalized right of anonymity."

Cruz v. State, SC2021-1767 (Fla. July 6, 2023) (per curiam) (Labarga, J., dissenting).

This review of the imposition of the death penalty presented the Court with the opportunity to determine whether the required proportionality review and relative culpability review are entirely separate matters, as suggested by *Palmes v. Wainwright*, 460 So. 2d 362, 364 (Fla. 1984) ("Proportionality review compares the sentence of death with other cases in which a sentence of death was approved

or disapproved. Disparate treatment of accomplices which may be a ground of mitigation is an entirely separate matter.").

Utilizing a contextual approach, the per curiam Court rejected any suggestion that *Palmes* meant what it said. Instead, the Court made "clear that this statement [in *Palmes*] cannot be interpreted literally to mean that relative culpability review does not fall under the umbrella of proportionality review."

With the recognition that the dual reviews are merely part of a singular analysis, the Court then scrapped both the comparative proportionality review and the relative culpability review entirely in the instance of reviewing a codefendant's sentence arising in the same case. concluding that "this Court's elimination of comparative proportionality review in *Lawrence [v. State*, 308 So. 3d 544 (Fla. 2020)] also resulted in the elimination of its relative culpability review. Here, that means that [codefendant] Charles's life sentence is irrelevant to and has no bearing on Cruz's death sentence."

Thus, in Florida, relative culpability review is no longer part of the death penalty review analysis since "[m]itigation is 'a constitutionally indispensable part of the process of inflicting the penalty of death.' *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976))."

Justice Labarga, having previously dissented to the elimination of comparative proportionality review, reiterated his disagreement with the Court's abandonment of relative proportionality review. Emphasizing his concern and admonishing the Court, Justice Labarga "view[ed] proportionality review as being consistent with the Eight Amendment prohibition of arbitrary death sentences. Surely, in a state that leads the nation with thirty exonerations of individuals from death row, every reasonable safeguard should be retained in this Court's toolkit when reviewing death sentences to ensure that the death penalty is reserved for the most aggravated and least mitigated of murders." (paragraph separation and footnote omitted).

Figueroa-Sanabria v. State, SC2021-1070 (Fla. June 29, 2023) (Couriel, J.) (Francis, J., specially concurring) (Labarga, J., concurring in result without opinion).

While affirming murder convictions that resulted in imposition of the death penalty, the Court "set aside Figueroa-Sanabria's sentences of death and remand[ed] his case for a new penalty phase because we find that he was deprived of his right to 'have the Assistance of Counsel for his defence' when the trial court put him to an improper choice at the outset of [the sentencing] phase of the proceedings." That unfair choice, explained the Court, was the defendant's invalid waiver of the right to the assistance of counsel during the penalty phase, "and counsel's subsequent absence for nearly the entire penalty phase …"

The Court did not address the State's waiver argument because it concluded "that the deprivation of counsel constitutes fundamental error …" The problem, the Court found, was that "Here, however, the trial court informed Figueroa-Sanabria that 'if [Hernandez] represents [Figueroa-Sanabria], he's going to present mitigation on [his] behalf,' effectively telling Figueroa-Sanabria that his right to the assistance of counsel was conditioned on the presentation of mitigation. Faced with this choice, one he should not have been forced to make, Figueroa-Sanabria decided to proceed pro se." Without clarity on this choice, the Court "cannot say that Figueroa-Sanabria knowingly and voluntarily waived his right to counsel for the penalty phase of his trial."

Justice Francis, specially concurring, approved the Court's decision to order a new sentencing hearing, but wrote to express her dissatisfaction with *Carpenter v. State*, 228 So. 3d 535 (Fla. 2017), that required a warrant before accessing historical cell site location information (CLSI). "Because the [*Carpenter*] decision was both misguided and unconstitutional, I urge overruling *Carpenter* and bringing our precedent in line with the United States and Florida Constitutions."

Loyd v. State, SC2022-0378 (Fla. November 16, 2023) (per curiam) (Labarga, J., concurring in result).

The Court affirmed the death penalty convictions and death sentence, finding no error in the removal of three prospective jurors for cause, approving use of the standard jury instruction on insanity, approving prosecution's closing argument referring to premeditation

during the guilt phase, rejecting the defense objection to the prosecution's arguments during the penalty phase, allowing the use of the standard jury instruction on penalty phase mitigating circumstances, finding the presentation of irrelevant victim impact evidence to be harmless, upholding the trial court's ruling on the defendant's competency to be sentenced, rejecting an equal protection challenge to the statutory exclusion of convicted felons from serving on the jury, approving the death qualifying of the jury, rejecting challenges to the constitutionality of the death penalty, concluding there was no support for the contention that the defendant was severely mentally ill, and finding the evidence was sufficient to conclude the jury's verdict was supported by competent, substantial evidence.

Reviewing the victim impact evidence issue, the Court determined that the trial court's overruling of the defense objection to the prosecution's slide presentation set up with background instrumental music was an erroneous abuse of discretion, but that the error was harmless. Victim impact evidence "must have some connection to the victim[,] and here the instrumental background music was irrelevant but did not impact the jury's death penalty decision."

Justice Labarga reiterated his objection to the Florida Supreme Court's abandonment of the "decades-long practice of comparative proportionality review in the direct appeals of sentences of death.".

Owen v. State, SC2023-0819 (Fla. June 9, 2023) (per curiam).

Finding this death row prisoner to be sane to be executed, the Court concluded that the defendant had not established "by clear and convincing evidence that he is insane to be executed." The lower tribunal concluded the defendant did not have any mental illness and "is feigning delusions to avoid the death penalty." The Court agreed the defendant's testimonial and related evidence was "unconvincing at best." Moreover, the lower tribunal was within its discretion to deny a continuance of the evidentiary hearing based on the unavailability of mental health experts to testify in person at the hearing, when the court considered their affidavits and the parties agreed the testimony would be consistent with their affidavits. "In the

end, the issue of Owen's sanity to be executed was 'resolved in the crucible of an adversarial proceeding.'"

Owen v. State, SC2023-0732 (Fla. June 5, 2023) (per curiam).

Affirming the denial of a fourth successive postconviction motion for this death row inmate scheduled for execution on June 15, 2023, the per curiam Court determined the defendant was not entitled to a competency determination or a stay of execution. Generally concluding that the postconviction claims were "both untimely and procedurally barred[,]" the Court declared that the "brain damage claim does not constitute newly discovered evidence" considering the "three decades [that] have passed since his conviction and sentence became final in 1992 …"

State v. Manago, SC2021-1047 (Fla. November 30, 2023) (Couriel, J.) (Labarga, J., dissenting).

Manago involved Supreme Court review of an *Alleyne* error, an erroneous decision by a trial court to make a decision that is constitutionally reserved to a jury, based on *Alleyne v. United States*, 570 U.S. 99 (2013). The question for the Florida Supreme Court was what remedy to utilize when the error occurs, noting that the appellate courts were in conflict on the appropriate remedy: one preferred remedy was to remand the case with instructions to resentence the defendant under a different statutory provision; while other courts instructed that the trial court could instead empanel a jury to make the factual determination that would have permitted the court to sentence the defendant under the statutory provision with a harsher penalty.

Recognizing that "[i]t is the historic role of the jury to stand as an intermediary between the State and criminal defendants[,]" Justice Couriel concluded that the only and "most natural remedy for a trial court's having erroneously taken from a jury a decision that a jury alone should make: giving it back." Noting that the plain text of the sentencing statute at issue required a finding that the defendant "actually killed, intended to kill, or attempted to kill the victim," the Supreme Court agreed that to deny the trial court recourse to a jury on remand would "deviate from the core teaching" of *Alleyne*. The

court "reced[ed] from *Williams* [*v. State*, 242 So. 3d 280, 290 (Fla. 2018)]."

The Court reasoned that requiring a jury determination when none had first occurred did not constitute a double jeopardy violation: "Nor does our decision pose the double jeopardy concern we articulated in *Williams*, for it has long been the law that 'a sentence does not have the qualities of constitutional finality that attend an acquittal.'" (citing *United States v. DiFrancesco*, 449 U.S. 117, 134 (1980)).

Justice Labarga dissented, concluding that a new jury trial on an element not previously found constitutes a violation of double jeopardy, providing the prosecution "a second bite at the apple." "Empaneling a jury to allow the State to reargue these facts implicates double jeopardy concerns that are exacerbated by the majority's holding that it cannot conclude beyond a reasonable doubt that a rational jury would have found that Manago actually killed, intended to kill, or attempted to kill the victim."

Tomlinson v. State, SC2021-1204 (Fla. August 24, 2023) (Couriel, J.) (Labarga, J., concurring in result without opinion).

Reviewing an extortion conviction arising from a case referred to as an episode of "Brokers Gone Wild" when a competing real estate broker threatened two high end South Florida realtors known as "the Jills," the Florida Supreme Court determined that the essential element for making "a threat 'intentionally and without lawful justification" did not require proof "that the defendant acted with ill will, hatred, spite, or an evil intent."

In this *de novo* case of statutory construction, Justice Couriel's decision is a primer on the applicable standards, referring to "historical and contextual clues," analyzing the "plain meaning of the text to keep us from overriding the bargain struck in the Legislature and signed by the Governor," "looking to the context in which [the word] appears, and what history tells us about how it got there[,]" even quoting from President Lincoln's Second Inaugural Address ("With malice toward none; with charity for all; …"), and discussing the rules of dicta in sidestepping a seemingly contrary decision (*State v. Gaylord*, 356 So. 2d 313, 314 (Fla. 1978)).

The comprehensive approach led the Court to conclude that "'maliciously,' as used in section 836.05, means 'intentionally and without any lawful justification." That is what the word has meant for the long history of its use in our law of extortion, even though it has, also for a long time, meant other things when used elsewhere."

Tunidor v. State, SC2022-1732 (Fla. April 13, 2023) (per curiam).

Tunidor, a prisoner under sentence of death, sought review of a nonfinal order denying his motion to disqualify the trial judge, based on an "appearance of impropriety and actual bias" arising from the judge's handling of the capital trial proceedings of Nikolas Cruz, "who is widely known for killing seventeen people at Marjory Stoneman Douglas High School in Parkland, Florida on February 14, 2018." Tunidor asserted that immediately after sentencing Cruz to life imprisonment based on the jury's sentencing verdict, the still-robed judge "exchanged hugs with the victims' families and members of the prosecution team, one of whom was … also the prosecutor in Tunidor's case." Two days later, according to the motion, the judge commiserated with the prosecutor about the sentencing during Tunidor's postconviction proceedings. The judge summarily denied the disqualification motion, stating the allegations were legally insufficient.

Treating the appeal as a petition for writ of prohibition, the Court identified the standard for disqualification in finding that the circumstances were legally sufficient to require the granting of the motion to disqualify:

Tundidor asserted in his motion that Judge Scherer's conduct at the Cruz proceedings and that was witnessed by Tundidor at the November 4, 2022, hearing in his own case, raises the appearance of actual bias in favor of the State and would leave any capital defendant, including himself, with an objective, well-founded, and reasonable fear that he would not receive a fair hearing before Judge Scherer. The law does not require Tundidor to show that Judge Scherer is actually biased or unable to be impartial. Rather, "[t]he question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially."

Wells v. State, SC2021-1001 (Fla. April 13, 2023) (Grosshans, J.) (Labarga, J., concurring in result with opinion).

Considering the five (5) issues presented for review, the Court found no reversible error. Noting that the *pro se* defendant pled guilty to the murder charge and initially discharged appointed counsel for the penalty phase, the Court determined that the defendant's request for standby appointed counsel to defend him at the penalty phase on the second day of the trial did not require a continuance of the proceedings when "counsel had more than eight months after their reappointment to focus on the mitigation component of the penalty phase." In imposing the death penalty, the Court observed, the sentencing court was correct to reject mitigators "when the State presents evidence incompatible with it." The Court rejected the defendant's facial overbreadth challenge to the constitutionality of the death penalty, holding that "[w]e have repeatedly rejected the argument that the death penalty statute violates the Eighth Amendment because it fails to sufficiently narrow the class of murderers eligible for the death penalty." Finally, the Court independently reviewed the sufficiency of the evidence to support the conviction and found that the defendant's guilty plea was made "knowingly, intelligently, and voluntarily."

Justice Labarga concurred in the result, but adhered to his dissent in Lawrence v. State, "wherein this Court abandoned this Court's decades-long practice of comparative proportionality review in direct appeal cases, …"

Zack v. State, SC2023-1233 (Fla. September 21, 2023) (Francis, J.) (Labarga, J., concurring in result without opinion).

Affirming the summary denial of a death row prisoner's fourth successive motion for postconviction relief, the Court denied his motion for a stay of execution ordered by the Governor to occur on October 3, 2023. The postconviction court had summarily denied the claims as untimely, procedurally barred, and meritless. The Court found no good cause for belatedly raising an untimely claim that Fetal Alcohol Syndrome (FAS) is the functional equivalent of an intellectual disability under the Eighth Amendment and *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that the Eighth Amendment

does not permit the execution of "mentally retarded" defendants), and that his "nonunanimous death recommendation by the jury during his penalty phase violates the Eighth Amendment" was "untimely, procedurally barred, and meritless."

In re: Amendments to Florida Rules of Criminal Procedure – 2023 Legislation, SC2023-1420 (Fla. November 22, 2023).

This is a review of fast-track amendments to the Florida Rules of Criminal Procedure based on 2023 legislation. The Court approved several proposed amendments reflecting legislative changes involving competence to proceed in §§ 916.12, 916.13, 921.0024, and 775.0823, Florida Statutes, made by chapters 2023-190, §§ 1, 2, and 2023-270, §§ 3, 4, Laws of Florida, that went into effect on July 1, 2023. The approved amendments were to Rules 3.211 (Competence to Proceed: Scope of Examination and Report), 3.212 (Competence to Proceed: Hearing and Disposition), and 3.992 (Criminal Punishment Code Scoresheet).

In re: Amendments to Florida Rules of Criminal Procedure 3.191 and Florida Rules of Appellate Procedure 9.140, SC2022-1123 (Florida Supreme Court Oral Argument, October 4, 2023).

The Florida Supreme Court held spirited oral argument on the pending proposed amendments to Florida Rule of Criminal Procedure 3.191 (speedy trial rule) and Florida Rule of Appellate Procedure 9.140 (appeal proceedings in criminal cases) represent a renewed effort to significantly overhaul Florida's speedy trial rules since 1984. *See Fla. Bar re Amendment to Rules—Criminal Procedure*, 462 So. 2d 386 (Fla. 1984); Fla. R. Crim. P. 3.191 committee notes (1984). The proposed rules seek to overturn several Florida Supreme Court decisions—most notably, *Born-Suniaga v. State*, 256 So. 3d 783 (Fla. 2018); *Genden v. Fuller*, 648 So. 2d 1183 (Fla. 1994); and *State v. Agee*, 622 So. 2d 473 (Fla. 1993)—holding that a defendant is entitled to a discharge where the speedy trial time periods have expired and the prosecution either does not file charges, files a *nolle prosequi*, or encouraging the defendant to believe that it has terminated its prosecutorial efforts when in fact charges have been filed.

To offset these outcomes, the proposals seek—as stated in the Court Commentary—"to assure the procedural speedy trial rule is not unconstitutionally interfering with substantive law by always giving the State an opportunity to bring an accused to trial during a recapture period." Subsection 3.191(a) implements this directive by "requir[ing] a defendant who seeks a dismissal to file a notice of expiration of speedy trial time if the state did not file a formal charging document 90 days (misdemeanor) or 175 days (felony) after arrest." The effective result is that criminal cases can never be discharged upon speedy trial grounds—even if the prosecution expresses an intent not to prosecute through pleadings abandoning prosecution—unless the defendant "file[s] a notice of expiration which provides the state with a recapture period."

B. Pending Review Granted Cases.

Oquendo v. State, SC2023-0807.

Certifying conflict with *State v. Mizell*, 773 So. 2d 618 (Fla. 1st DCA 2000), the Second District affirmed a trial court ruling rejecting a defense request to present expert testimony on post-traumatic stress disorder in support of the theory of self-defense. The conflict posits the relevance of PTSD evidence in light of the objective standard of self-defense to be evaluated by the jury. The standard jury instruction requires the jury to assess whether "a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that [force]." Fla. Std. Jury Instr. (Crim.) 3.6(f) (brackets in original).

Pryor v. State, SC2023-0593.

The Florida Supreme Court accepted conflict discretionary review of a Second District case to decide the proper test for fundamental error for evidence sufficiency issues on direct criminal appeal. Citing an express and direct conflict with *T.E.B. v. State*, 338 So. 3d 290 (Fla. 4th DCA 2022), the petitioner argues that the evidence proved a necessary lesser offense of conviction but was otherwise insufficient to prove the enhancing element needed to establish the greater offense, such that the appellate court erred in rejecting a claim of

fundamental error because "a crime was committed." Relying on *F.B. v. State*, 852 So. 2d 229 (Fla. 2002), the Second District held that fundamental error occurs with evidence-sufficiency issues only when the evidence is insufficient to show that any crime was committed at all.

Parrish v. State, SC2022-1457.

The Florida Supreme Court accepted conflict discretionary review of a First District decision declining to review a sentencing court's decision to not impose a downward sentencing departure.

C. 2023-2024 Oral Argument Calendar.

The Florida Supreme Court held nine (9) Oral Argument Calendars for 2023, and scheduled five (5) Calendars for 2024, through June. The Court heard twelve (12) criminal law-related arguments, of which 7 involved death penalty review.

2023
February 8-9: 1 criminal law case.
March 8-9: No criminal law cases.
April 5-6: 1 criminal law case.
May 2-3: 3 criminal law cases.
September 6-7: 4 criminal law cases.
October 4: 2 criminal law cases.
November 8: 1 criminal law case.
December 6: No criminal law cases.
2024
February 5-9
March 4-8
April 1-5
May 6-10
June 3-7

D. Criminal Law Cases Miscellany, 2023.

Total Criminal-Related Cases Decided: 33
Death Penalty Cases: 23
Non-Death Penalty Cases: 10

Majority Opinion Authors for 2023 Criminal Cases:

- Canady: 0
- Couriel: 3
- Francis: 1
- Grosshans: 1
- Labarga: 1
- Muñiz: 0
- Sasso: 0
- Per curiam: 27

Court Splits:

- Unanimous: 20
- Concurring opinions or in result only: 6 (Labarga: 5; Francis: 1)
- Dissents: 7 (Labarga: 6; Francis: 1)