

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY**

STATE OF FLORIDA
Plaintiff,

CASE NO: 23-CF-2935

Vs.

TOMASZ KOSOWSKI,
Defendant.

**MOTION TO PRECLUDE APPLICATION OF THE MOST RECENT
AMENDMENTS TO F.S. 921.141 IN THIS CASE AS SUCH APPLICATION
WOULD VIOLATE F.S. 775.022**

The Defendant, TOMASZ KOSOWSKI, through his undersigned counsel, moves this Court pursuant to F.S. 775.022 to preclude application of the most recent amendments to F.S. 921.141 in this case. In support, counsel states the following:

1. The Defendant is charged with First Degree Capital Murder in contravention of Florida Statute sections 782.04 and 775.087. The state of Florida is seeking the death penalty.
2. "Except as expressly provided in an act of the legislature ... the reenactment or amendment of a criminal statute operates **prospectively** ... and does not affect or abate ... [t]he prior operation of the statute ... [a] violation of the statute based on any act or omission occurring before the effective date of the act ... [or] [a] prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute." F.S. 775.022(3). (Emphasis added).
3. The term criminal statute means "a statute whether substantive or procedural, **dealing in any way with a crime or its punishment**, defining a crime or a defense to a crime, or providing for the punishment of a crime" F.S. 775.022(2). (Emphasis added)

4. When the Legislature amended F.S. 921.141 - dispensing with the jury unanimity requirement and replacing it with an 8-4 vote - it did not attempt to apply the amendments retroactively.
5. In order to discern legislative intent, the Court looks first to the plain and obvious meaning of the statute's text. *Smith v. State*, 204 So. 3d 18, 21 (Fla. 2016). If the statute is clear and unambiguous, then the Court does not look beyond the plain language or employ the rules of construction to determine legislative intent- it simply applies the law. *Gaulden v. State*, 195 So. 3d 1123, 1125 (Fla. 2016).
6. A statute that provides an unambiguous effective date is clear and controlling evidence of legislative intent. *See State Farm Mut. Auto. Ins. Co. v. W. Gables Open MRI Servs., Inc.*, 846 So. 2d 538, 540 (Fla. 3d DCA 2003). In amending the statute, the legislature stated that "[t]his act shall take effect upon becoming a law," which occurred when the Governor signed the bill into law on April 20, 2023. Ch. 2023-23, Laws of Fla. "[T]he Legislature's inclusion of an effective date for an amendment is considered to be evidence rebutting intent for retroactive application of a law." *Fla. Ins. Guar. Ass'n v. Devon Neighborhood Ass'n*, 67 So. 3d 187, 196 (Fla. 2011).
7. As our Supreme Court has recognized, "the judiciary has an obligation, pursuant to the separation of powers contained in article II, section 3 of the Florida Constitution, to construe statutory pronouncements in strict accord with the legislative will." *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 244 (Fla. 2001). "[C]ourts cannot judicially alter the wording of statutes ... A court's function is to interpret statutes as they are written and give effect to each word in the statute." *Fla. Dep't of Revenue v. Fla. Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001).

8. Application in this case of the 2023 amendments to section 921.141 is violation of the Ex Post Facto Clauses of the United States and Florida Constitutions.

WHEREFORE, the Defendant, through his undersigned counsel of record requests his Honorable Court enter an Order precluding application of the most recent amendment to F.S. 921.141 in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via electronic submission to the Office of the State Attorney on this 29th day of January, 2026.

Respectfully Submitted,

/s/Daniel M. Hernandez
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