

Supreme Court of Florida

No. SC20-1653

**IN RE: AMENDMENTS TO FLORIDA RULE OF APPELLATE
PROCEDURE 9.142(a).**

January 14, 2021

PER CURIAM.

The Court, on its own motion,¹ amends Florida Rule of Appellate Procedure 9.142(a) (Procedure in Death Penalty Appeals) to remove reference to comparative proportionality review. *See* art. V, § 2(a), Fla. Const.

In *Lawrence v. State*, 45 Fla. L. Weekly S277 (Fla. Oct. 29, 2020), this Court held that the Florida Constitution’s conformity clause “forbids this Court from analyzing death sentences for comparative proportionality in the absence of a statute establishing that review.” *Id.* at S277. In so holding, we receded from *Yacob v. State*, 136 So. 3d 539 (Fla. 2014), and “eliminate[d] comparative

1. *See* Fla. R. Jud. Admin. 2.140(d).

proportionality review from the scope of our appellate review set forth in rule 9.142(a)(5).” 45 Fla. L. Weekly at S279.

Accordingly, consistent with our decision in *Lawrence*, rule 9.142(a) is amended as reflected in the appendix to this opinion. Deletions are indicated by struck-through type. The amendment shall become effective immediately upon the release of this opinion.

It is so ordered.

CANADY, C.J., and POLSTON, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.
LABARGA, J., dissents with an opinion.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS AMENDMENT.

LABARGA, J., dissenting.

For the reasons expressed in my dissent in *Lawrence v. State*, 45 Fla. L. Weekly S277 (Fla. Oct. 29, 2020), I dissent to the removal of proportionality review from the rule governing our procedure in death penalty appeals.

Original Proceeding – Florida Rules of Appellate Procedure

APPENDIX

RULE 9.142 PROCEDURE FOR REVIEW IN DEATH PENALTY CASES

(a) Procedure in Death Penalty Appeals.

(1) – (4) [No Change]

(5) Scope of Review. On direct appeal in death penalty cases, whether or not insufficiency of the evidence ~~or proportionality~~ is an issue presented for review, the court shall review these issues and, if necessary, remand for the appropriate relief.

(b) – (d) [No Change]