

# Supreme Court of Florida

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No. SC17-1383

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**CHARLES KENNETH FOSTER,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[January 29, 2018]

PER CURIAM.

We have for review Charles Kenneth Foster's appeal of the circuit court's order denying Foster's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Foster's motion sought relief pursuant to the United States Supreme Court's decision in Hurst v. Florida, 136 S. Ct. 616 (2016), and our decision on remand in Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). This Court stayed Foster's appeal pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017). After this

Court decided Hitchcock, Foster responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Foster's response to the order to show cause, as well as the State's arguments in reply, we conclude that Foster is not entitled to relief. Foster was sentenced to death following a jury's recommendation for death by a vote of eight to four. Foster v. State, 654 So. 2d 112, 113 (Fla. 1995). Foster's sentence of death became final in 1995. Foster v. Florida, 516 U.S. 920 (1995). Thus, Hurst does not apply retroactively to Foster's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Foster's motion.

The Court having carefully considered all arguments raised by Foster, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.  
PARIENTE, J., concurs in result with an opinion.  
LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

An Appeal from the Circuit Court in and for Bay County,  
Harry Hentz McClellan, Judge - Case No. 031975CF000486XXAXMX

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, Mark S. Gruber, Julie A. Morley, and Margaret S. Russell, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida; and Billy H. Nolas, Chief, Capital Habeas Unit, Office of the Federal Public Defender, Northern District of Florida, Tallahassee, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida,

for Appellee