

236 So.3d 234
Supreme Court of Florida.

Antonio Lebaron MELTON, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-1147

|
[February 2, 2018]

Synopsis

Background: After affirmance of defendant's murder conviction and death sentence, [638 So.2d 927](#), affirmance of denial of postconviction relief and denial of petition for habeas corpus relief, [193 So.3d 881](#), and denial of successive petition for habeas relief, [2018 WL 566451](#), defendant filed a motion for collateral relief. The Circuit Court, Escambia County, No 171991CF000373XXXBXX, [W. Joel Boles, J.](#), denied the motion. Defendant appealed.

[Holding:] The Supreme Court held that [Hurst v. State, 202 So.3d 40](#), which required a jury to unanimously find that aggravating factors were sufficient to impose death, did not apply retroactively to defendant's death sentence.


Affirmed.

[Pariente, J.](#), filed an opinion concurring in result.

[Lewis and Canady, JJ.](#), concurred in result.

West Headnotes (1)

[1] Courts

 [In general;retroactive or prospective operation](#)

Florida Supreme Court decision in [Hurst v. State, 202 So.3d 40](#), in which Court held that a jury to was required to unanimously find that aggravating factors were sufficient to impose death, did not apply retroactively to defendant's death sentence; defendant

was sentenced to death following a jury's recommendation for death by a vote of eight to four, and his sentence became final approximately 22 years before *Hurst* was issued.

Cases that cite this headnote

An Appeal from the Circuit Court in and for Escambia County, [W. Joel Boles, Judge—Case No. 171991CF000373XXXBXX](#)

Attorneys and Law Firms

[Linda McDermott](#) of [McClain & McDermott, P.A.](#), Estero, Florida, for Appellant

[Pamela Jo Bondi](#), Attorney General, and [Charmaine Millsaps](#), Senior Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

***235** We have for review Antonio Lebaron Melton's appeal of the circuit court's order denying Melton's motion filed pursuant to [Florida Rule of Criminal Procedure 3.851](#). This Court has jurisdiction. [See art. V, § 3\(b\)\(1\), Fla. Const.](#)

Melton's motion sought relief pursuant to the United States Supreme Court's decision in [Hurst v. Florida, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 \(2016\)](#), and our decision on remand in [Hurst v. State \(Hurst\), 202 So.3d 40 \(Fla. 2016\)](#), [cert. denied, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 \(2017\)](#). This Court stayed Melton's appeal pending the disposition of [Hitchcock v. State, 226 So.3d 216 \(Fla. 2017\)](#), [cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 \(2017\)](#). After this Court decided [Hitchcock](#), Melton responded to this Court's order to show cause arguing why [Hitchcock](#) should not be dispositive in this case.

After reviewing Melton's response to the order to show cause, as well as the State's arguments in reply, we conclude that Melton is not entitled to relief. Melton was sentenced to death following a jury's recommendation for death by a vote of eight to four. [Melton v. State, 638](#)

So.2d 927, 928 (Fla. 1994). His sentence of death became final in 1994. [Melton v. Florida](#), 513 U.S. 971, 115 S.Ct. 441, 130 L.Ed.2d 352 (1994). Thus, [Hurst](#) does not apply retroactively to Melton's sentence of death. See [Hitchcock](#), 226 So.3d at 217. Accordingly, we affirm the denial of Melton's motion.

The Court having carefully considered all arguments raised by Melton, 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, — U.S. —, 138 S.Ct. 513, — L.Ed.2d — (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in [Hitchcock](#).

All Citations

236 So.3d 234, 44 Fla. L. Weekly S77