

Cases that cite this headnote

235 So.3d 295
Supreme Court of Florida.

Mark Allen DAVIS, Appellant,
v.
STATE of Florida, Appellee.

No. SC17-1259
|
[January 29, 2018]

Synopsis

Background: Motion was filed for post-conviction relief following affirmance of death sentence, [620 So.2d 152](#). The Circuit Court, Pinellas County, [Chris Thom Helinger, J.](#), No. 521985CF008933XXXXNO, denied motion. Movant appealed.

[Holding:] The Supreme Court held that Supreme Court's [Hurst, 136 S.Ct. 616](#), decision invalidating capital sentencing scheme did not apply retroactively to death sentence that became final in 1994.


Affirmed.

[Pariente, J.](#), concurred in result and filed statement.

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

West Headnotes (1)

[1] Courts

 In general;retroactive or prospective operation

United States Supreme Court's [Hurst, 136 S.Ct. 616](#), decision invalidating capital sentencing scheme as violating Sixth Amendment did not apply retroactively to death sentence that became final in 1994. (Per curiam with the Chief Justice and two justices concurring and three justices concurring in result.). [U.S. Const. Amend. 6](#).

***296** An Appeal from the Circuit Court in and for Pinellas County, [Chris Thom Helinger](#), Judge—Case No. 521985CF008933XXXXNO

Attorneys and Law Firms

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Opinion

PER CURIAM.

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

Davis'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 Davis'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](#), Davis responded to this Court's order to show cause arguing why [Hitchcock](#) should not be dispositive in this case.

After reviewing Davis's response to the order to show cause, as well as the State's arguments in reply, we conclude that Davis is not entitled to relief. Davis was sentenced to death following a jury's recommendation for death by a vote of eight to four. [Davis v. State, 620 So.2d 152, 153 n.3 \(Fla. 1993\)](#). Davis's sentence of death became final in 1994. [Davis v. Florida, 510 U.S. 1170, 114 S.Ct. 1205, 127 L.Ed.2d 552 \(1994\)](#). Thus, [Hurst](#) does not apply retroactively to Davis's sentence of death. [See Hitchcock, 226 So.3d at 217](#). Accordingly, we affirm the denial of Davis's motion.

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

LABARGA, C.J., and POLSTON, and LAWSON, JJ., concur.

PARIENTE, J., concurs in result with an opinion.

LEWIS and CANADY, JJ., concur in result.

QUINCE, J., recused.

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, 199 L.Ed.2d 396 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in [Hitchcock](#).

All Citations

235 So.3d 295, 43 Fla. L. Weekly S48