

DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

HENRY SIRECI,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

**UNOPPOSED APPLICATION FOR SIXTY (60) DAY EXTENSION OF TIME IN
WHICH TO FILE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA
SUPREME COURT**

COMES NOW THE PETITIONER, HENRY SIRECI, by and through undersigned counsel, and pursuant to Supreme Court Rule 13-5, and respectfully requests an extension of time of sixty (60) days within which to file his Petition for Writ of Certiorari to the Florida Supreme Court. In support of his request, Petitioner, through counsel, states as follows:

1. Petitioner is an indigent death-sentenced inmate in the custody of the State of Florida. Undersigned counsel represents Petitioner in his state collateral appeals. Undersigned counsel also was appointed to represent Mr. Sireci in the United States District Court and the United States Court of Appeals for the Eleventh Circuit pursuant to the Criminal Justice Act (18 U.S.C. § 3006A).

2. This case involves an appeal from the decision of the Florida Supreme Court denying Mr. Sireci's Successive Motion for Post-Conviction Relief pursuant to Florida Rule of Criminal Procedure 3.851.
3. This Court's jurisdiction rests on 28 U.S.C. §1257(a).
4. Petitioner was convicted of murder and sentenced to death in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.
5. On January 31, 2018, the Florida Supreme Court denied Mr. Sireci's appeal of the denial of his successive motion for post-conviction relief. (Attachment A). A timely motion for rehearing was filed, and was stricken on February 26, 2018. (Attachment B). Petitioner's time to petition for certiorari in this Court expires on May 1, 2018¹.
6. Petitioner shows the following good cause in support of this request.
7. Petitioner's counsel, who is employed by a state agency, has had a burdensome caseload since the final disposition of Petitioner's case in the Florida Supreme Court. Within the last 90 days, counsel has, *inter alia*, conducted a contested public records hearing with multiple agencies on an initial post-conviction motion, and has prepared briefing and motions in the Florida Supreme Court on multiple cases on *Hurst* related issues. Further, counsel has prepared and filed numerous §1983 Complaints challenging the State of Florida's recent and substantial change to its lethal injection protocol. Undersigned counsel also just received a briefing schedule from the Florida Supreme Court on a Successive Post-Conviction Motion after an evidentiary hearing, and the Initial Brief is due

¹ Since Rehearing was timely filed, Petitioner would assert that the 90 days should run from February 26, 2018, but in an abundance of caution, since the Rehearing was stricken, Petitioner has calculated the date from the original opinion.

on April 23, 2018. Finally, counsel is in the middle of competency evaluations on two separate clients, which involves multiple trips with experts for the evaluations, as well as extensive document collection and distribution. As a result of all of the above, counsel has not been able to prepare a proper Petition for a Writ of Certiorari in Petitioner's case.

8. Counsel for the Respondent consents to this Motion.

WHEREFORE, Petitioner, through his undersigned counsel, respectfully requests an extension of time of sixty (60) days within which to file the Petition for Writ of Certiorari to the Florida Supreme Court in the above-styled case.



Maria DeLiberato
Florida Bar No. 664251
Office of the Capital Collateral Regional Counsel –
Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
Telephone: (813) 558-1600
Facsimile: (813) 558-1601
Lead Attorney for Petitioner*

ATTACHEMENT

A

Supreme Court of Florida

No. SC17-1143

HENRY PERRY SIRECI,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 31, 2018]

PER CURIAM.

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

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

After reviewing Sireci's response to the order to show cause, as well as the State's arguments in reply, we conclude that Sireci is not entitled to relief. Sireci was sentenced to death following a jury's recommendation for death by a vote of eleven to one. Sireci v. State, 587 So. 2d 450, 451-52 (Fla. 1991). Sireci's sentence of death became final in 1992. Sireci v. Florida, 503 U.S. 946 (1992). Thus, Hurst does not apply retroactively to Sireci's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Sireci's motion.

The Court having carefully considered all arguments raised by Sireci, 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 Orange County,
Wayne C. Wooten, Judge - Case No. 481976CF000532000AOX

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, Julissa R. Fontán, Maria E. DeLiberato and Chelsea Shirley, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Scott A. Browne, Senior Assistant Attorney General, Tampa, Florida,

for Appellee

ATTACHMENT

B

Supreme Court of Florida

MONDAY, FEBRUARY 26, 2018

CASE NO.: SC17-1143
Lower Tribunal No(s).:
481976CF000532000AOX

HENRY PERRY SIRECI

vs. STATE OF FLORIDA

Appellant(s)

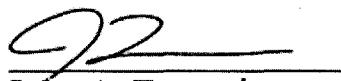
Appellee(s)

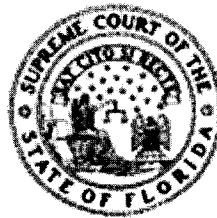
Appellant's Motion for Rehearing is hereby stricken.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and LAWSON, JJ., concur.

A True Copy

Test:


John A. Tomasino
Clerk, Supreme Court



jat

Served:

MARIA E. DELIBERATO
SCOTT A. BROWNE
CHELSEA RAE SHIRLEY
JULISSA FONTÁN