

236 So.3d 231
Supreme Court of Florida.

Samuel Jason DERRICK, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-1242

|

[February 2, 2018]

Synopsis

Background: After affirmance of defendant's murder conviction and vacation of death sentence, [581 So.2d 31](#), affirmance of resentencing to death, [641 So.2d 378](#), affirmance of denial of state postconviction relief and denial of habeas relief, [983 So.2d 443](#), and partial dismissal of petition for habeas relief, [2010 WL 3819332](#), defendant filed a motion for collateral relief. The Circuit Court, Pasco County, No. 511987CF001775CFAXWS, [Stanley Richard Mills, 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 seven to five, and his sentence became final approximately 21 years before *Hurst* was issued.

[Cases that cite this headnote](#)

An Appeal from the Circuit Court in and for Pasco County, [Stanley Richard Mills](#), Judge—Case No. 511987CF001775CFAXWS

Attorneys and Law Firms

[Linda McDermott](#) of McClain & McDermott, P.A., Estero, Florida; and [Harry P. Brody](#), Sarasota, Florida, for Appellant

[Pamela Jo Bondi](#), Attorney General, Tallahassee, Florida, and [C. Suzanne Bechard](#), Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

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

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

After reviewing Derrick's response to the order to show cause, as well as the State's arguments in reply, we conclude that Derrick is not entitled to relief. Derrick was sentenced to death following a jury's recommendation for

death by a vote of seven to five. [Derrick v. State](#), 641 So.2d 378, 379 (Fla. 1994). Derrick's sentence of death became final in 1995. [Derrick v. Florida](#), 513 U.S. 1130, 115 S.Ct. 943, 130 L.Ed.2d 887 (1995). Thus, [Hurst](#) does not apply retroactively to Derrick's sentence of death. See [Hitchcock](#), 226 So.3d at 217. Accordingly, we affirm the denial of Derrick's motion.

The Court having carefully considered all arguments raised by Derrick, 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, — 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 231, 43 Fla. L. Weekly S75

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.