

DOCKET NO. _____

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

KONSTANTINOS X. FOTOPOULOS

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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, KONSTANTINOS X. FOTOPOULOS, by and through the undersigned counsel, and pursuant to Supreme Court Rule 13-5, and respectfully requests as extension 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 the following:

1. Petitioner is an indigent death-sentenced inmate in the custody of the State of Florida. Undersigned counsel represents Petitioner in collateral proceedings in state and federal court since 2004. Undersigned counsel was appointed to represent Mr. Fotopoulos 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 follows from the decision of the Florida Supreme Court affirming the trial court's denial of Mr. Fotopoulos' successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851.

3. This Court has certiorari jurisdiction under 28 U.S.C. §1257.

4. The Florida Supreme Court issued the opinion affirming the trial court's denial on January 29, 2018. (Attachment A) Mr. Fotopoulos filed a timely motion for rehearing on February 13, 2018. On February 26, 2018, the Florida Supreme Court struck the motion although not for timeliness. (Attachment B). In an abundance of caution, the Petitioner will use the date of the Florida Supreme Court's opinion as the operative date even though the motion for rehearing was timely. Accordingly, using this date, Petitioner's due date for the petition is April 29, 2018, a Sunday which carries is extended to Monday, April 30, 2018. See Rule 30.

5. Petitioner shows the following good cause in support of this request:

A. Petitioner's counsel is employed by a state agency, Capital Collateral Regional Counsel - Middle. Counsel has a number of very active cases that require considerable work and attention to provide the representation necessary in capital cases.

B. Since the opinion in Petitioner's case, counsel filed two initial appellate briefs and one reply brief in the Florida Supreme Court. He has also participated in one evidentiary hearing and responded and replied to show cause orders from the Florida Supreme Court similar to the one in the instant case.

C. Petitioner's counsel was ill for approximately 2 weeks during which he was only able to do a limited amount of work.

6. As a result of the forgoing, counsel respectfully requests a 60-day extension of time [from April 29, 2018 date] to submit a petition for writ of certiorari.

WHEREFORE, Petitioner, through his undersigned counsel, respectfully requests an extension of sixty (60) days from the April 29, 2018 date to file the Petition for Writ of Certiorari on behalf of Petitioner.


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Lead Attorney for the Petitioner*

ATTACHMENT A

OPINION OF THE FLORIDA SUPREME COURT
SC17-971

Fotopoulos v. State

January 29, 2018

Supreme Court of Florida

No. SC17-971

KONSTANTINOS X. FOTOPoulos,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 29, 2018]

PER CURIAM.

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

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

After reviewing Fotopoulos's response to the order to show cause, as well as the State's arguments in reply, we conclude that Fotopoulos is not entitled to relief. Fotopoulos's jury found him guilty of two counts of first-degree murder and recommended a sentence of death for both murders by a vote of eight to four.¹

Fotopoulos v. State, 608 So. 2d 784, 787 (Fla. 1992). Following the jury's recommendations, the trial court sentenced Fotopoulos to death on both counts. Id. Fotopoulos's sentences of death became final in 1993. Fotopoulos v. Florida, 508 U.S. 924 (1993). Thus, Hurst does not apply retroactively to Fotopoulos's sentences of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Fotopoulos's motion.

The Court having carefully considered all arguments raised by Fotopoulos, 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.

1. Although our decision affirming Fotopoulos's death sentences does not specify the number of Fotopoulos's jurors who voted to recommend death, he represents in his response to this Court's order to show cause that the jury recommended death for both murders by a vote of eight to four. Resp. to Order to Show Cause, Fotopoulos v. State, No. SC17-971 (Fla. Oct. 17, 2017), at 2.

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 Volusia County,
James R. Clayton, Judge - Case Nos. 641989CF007632XXAES,
641990CF001995XXAES and 641990CF006668XXAES

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, James L. Driscoll, Jr., David Dixon Hendry, and Gregory W. Brown, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Leslie T. Campbell, Senior Assistant Attorney General, West Palm Beach, Florida,

for Appellee

ATTACHMENT B

Order Striking Motion for Rehearing

SC17-971

Fotopoulos v. State

February 26, 2018

Supreme Court of Florida

MONDAY, FEBRUARY 26, 2018

CASE NO.: SC17-971
Lower Tribunal No(s).:
1989-7632, 1990-1995, 90-6668

KONSTANTINOS X FOTOPoulos vs. STATE OF FLORIDA

Appellant(s)

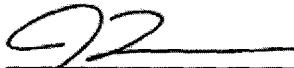
Appellee(s)

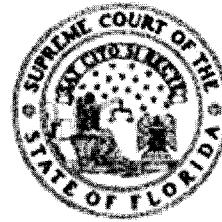
Appellant's Motion for Rehearing is hereby stricken.

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

A True Copy

Test:


John A. Tomasino
Clerk, Supreme Court



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Served:

LESLIE T. CAMPBELL
DAVID DIXON HENDRY
JAMES L. DRISCOLL JR.
GREGORY W. BROWN
HON. JAMES R. CLAYTON, JUDGE
ROSEMARY CALHOUN
HON. LAURA E. ROTH, CLERK