

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

BRUCE DOUGLAS PACE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

**APPLICATION FOR A SIXTY DAY EXTENSION OF TIME
IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT**

CAPITAL CASE

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner, BRUCE DOUGLAS PACE, by and through undersigned counsel, and pursuant to 28 U.S.C. § 2101(d) and Rules 13.5 and 30.2 of this Court, respectfully requests an extension of time of sixty (60) days to file a petition for writ of certiorari to the Florida Supreme Court, to and including June 29, 2018.

Mr. Pace is a death-sentenced inmate in the custody of the State of Florida. This Court has jurisdiction to review the decision of the Florida Supreme Court

under 28 U.S.C. § 1257(a).

Mr. Pace was convicted of one count of murder and sentenced to death in the Circuit Court of the First Judicial Circuit in and for Santa Rosa County, Florida. This case involves the decision of the Florida Supreme Court entered on January 30, 2018 affirming the denial Mr. Pace's motion for postconviction relief, including his claim that his sentence of death is unconstitutional in light of the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). See *Pace v. State*, 2018 WL 618590 (Fla. 2018), reh'g stricken, SC17-1021, 2018 WL 1052767 (Fla. Feb. 26, 2018). (Attachment A).

Mr. Pace's time to petition for certiorari in this Court regarding the Florida Supreme Court's decision expires on April 30, 2018. This application for a sixty-day extension is being filed more than ten days before that date. Undersigned counsel shows the following good cause in support of this request.

Mr. Pace is represented by the Office of the Capital Collateral Regional Counsel-South (CCRC-South), a Florida state agency charged with the responsibility of representing indigent death row inmates. Undersigned counsel is assigned as lead counsel for Mr. Pace and carries a full caseload of capital postconviction cases. As a result of the manner in which the Florida Supreme Court disposed of Mr. Pace's case (and like cases with similar *Hurst*-related claims), undersigned counsel has two additional cases in a similar posture as Mr. Pace's.

Counsel is also responsible for at least four additional cases with successive *Hurst*-related claims which are being actively litigated in the trial courts and Florida Supreme Court. In addition, counsel is lead counsel on several other cases being litigated in the trial courts, Florida Supreme Court and federal courts at various stages of the postconviction process.

Due to undersigned counsel's caseload and the posture of his cases, counsel has not been able to prepare a proper petition for writ of certiorari in Mr. Pace's case. If the sixty-day extension of time is granted, counsel's intention is to file a petition for certiorari on or before June 29, 2018.

Undersigned counsel has contacted counsel for the State of Florida, Lisa Hopkins, Assistant Attorney General, who has no objection to this request for an extension of time.

WHEREFORE, Mr. Pace respectfully requests that an order be entered extending his time to petition for certiorari to and including June 29, 2018.

Respectfully submitted,

PAUL EDWARD KALIL
Assistant CCRC-South
Florida Bar No. 174114
kalilp@ccsr.state.fl.us
**Counsel of record*
1 East Broward Boulevard, Suite 444
Fort Lauderdale, FL 33301
(954) 713-1284 Tel.
COUNSEL FOR MR. PACE

ATTACHMENT A

2018 WL 618590
Supreme Court of Florida.

Bruce Douglas PACE, Appellant,
v.
STATE of Florida, Appellee.

No. SC17-1021

|

[January 30, 2018]

Synopsis

Background: Defendant who had been sentenced to death filed a motion for collateral relief. The Circuit Court, Santa Rosa County, No. 571988CF000689XXAXMX, David H. Rimmer, 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.

An Appeal from the Circuit Court in and for Santa Rosa County,

David H. Rimmer, Judge—Case No. 571988CF000689XXAXMX

Attorneys and Law Firms

Neal Dupree, Capital Collateral Regional Counsel, Bri Lacy, Staff Attorney, and Paul Kalil, Assistant Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida, for Appellant

Pamela Jo Bondi, Attorney General, and Lisa A. Hopkins, Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

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

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

After reviewing Pace's response to the order to show cause, as well as the State's arguments in reply, we conclude that Pace is not entitled to relief. Pace was sentenced to death following a jury's recommendation for death by a vote of seven to five. See Pace v. State, 596 So.2d 1034, 1035 (Fla. 1992).¹ His sentence of death became final in 1992. Pace v. Florida, 506 U.S. 885, 113 S.Ct. 244, 121 L.Ed.2d 178 (1992). Thus, Hurst does not apply retroactively to Pace's sentence of death. See Hitchcock, 226 So.3d at 217. Accordingly, we affirm the denial of Pace's motion.

The Court having carefully considered all arguments raised by Pace, 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, 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

--- So.3d ----, 2018 WL 618590, 43 Fla. L. Weekly S50

Footnotes

- 1 While the jury's vote to recommend a sentence of death is not reflected in this Court's opinion on direct appeal, this Court's opinion addressing Pace's initial postconviction appeal and separate petition for a writ of habeas corpus states that the jury voted seven to five to recommend a sentence of death. Pace v. State, 854 So.2d 167, 170 (Fla. 2003).