

No. \_\_\_\_\_

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# In the Supreme Court of the United States

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EMANUEL JOHNSON,

*Petitioner,*

v.

STATE OF FLORIDA,

*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF FLORIDA

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## APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

DEATH PENALTY CASE

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**MARGARET S. RUSSELL**  
COUNSEL OF RECORD

**JULIE A. MORLEY**

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## APPENDIX A

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

Case No. 88-3199-F

EMANUEL JOHNSON

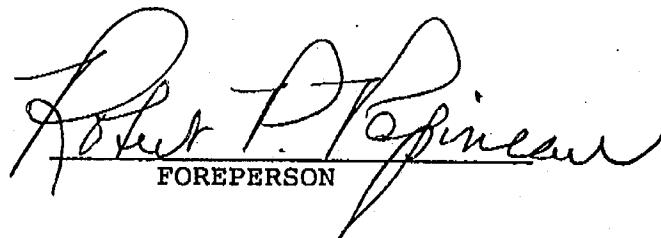
Defendant.

VERDICT: PENALTY PHASE

4 1. We recommend the Defendant be sentenced to Life  
Imprisonment without the possibility of parole for  
8 votes 25 years. 8 to 4

2. We recommend, by a vote of 8 to 4, that the  
Defendant be sentenced to Death.

So Say We All this 30 day of May, 1991.

  
Robert P. Popineau  
FOREPERSON

Filed in Open Court  
5/30/91  
Bill-51-008727

## APPENDIX B

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

Case No. 88-3200-CF-AN1

EMANUEL JOHNSON

Defendant.

**VERDICT: PENALTY PHASE**

1. We recommend the Defendant be sentenced to Life Imprisonment without the possibility of parole for 25 years.
2. We recommend, by a vote of 10 - 2, that the Defendant be sentenced to Death.

So Say We All this 18 day of June, 1991.

*Fred Tegge*  
FOREPERSON

Filed in Open Court  
6/18/91

*Bills-507*

008 *AS*

## APPENDIX C

IN THE TWELFTH JUDICIAL CIRCUIT COURT  
IN AND FOR SARASOTA COUNTY, FLORIDA

RECEIVED BY  
CCRC-MIDDLE  
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STATE OF FLORIDA

Plaintiff,

v.

EMANUEL JOHNSON,

Defendant.

Case Nos. 1988-CF-3198-NC

1988-CF-3199-NC

1988-CF-3200-NC

1988-CF-3438-NC

**ORDER DENYING DEFENDANT'S  
SUCCESSIVE MOTIONS FOR POSTCONVICTION RELIEF**

This matter is before the Court on Defendant's "Successive Motion to Vacate Judgments of Conviction and Sentence (*Hurst v. Florida*)," filed in each of the above-captioned cases on January 6, 2017, pursuant to Fla. R. Crim. P. 3.851. After the Court granted an extension of time, the State timely filed its answer to the motions on March 10, 2017. The Court conducted a case management conference on April 10, 2017. The parties did not request an evidentiary hearing, and upon consideration, the Court finds that an evidentiary hearing is not necessary to resolve Defendant's claims. The Court has reviewed the motions, the court file, and applicable law, and is otherwise duly advised in the premises.

**Case History for Victim Iris White**

On November 4, 1988, Defendant was indicted for the first degree murder of Iris White in Case No. 1988-CF-3199. The Florida Supreme Court summarized the facts of the case:

On October 4, 1988, police found the body of 73-year-old Iris White. She was naked from the waist down and had suffered twenty-four stab wounds, one incised wound, and blunt trauma to the back of the head. A variety of fatal wounds penetrated the lungs and heart. The body also showed evidence of defensive wounds and abrasions near the vagina and anus most likely caused by a forceful opening by hand or fingernails.

Police found a screen in the living room had been cut and the lower window raised. The fingerprints of Emanuel Johnson were recovered from the window sill. Police also found two pubic hairs that showed the same microscopic characteristics as Johnson's, though an expert stated that an exact identification was not possible. Johnson had done yard work for White some years earlier.

After a lengthy interrogation on October 12, 1988, Johnson gave a taped confession to police. He stated that he knocked on White's door to talk about lawn maintenance. When she opened the door, he then grabbed her, choked her to unconsciousness, and then stabbed her several times. Johnson said he then left the house, locking the door behind himself, but forgot to take White's wallet. Twenty minutes later, he cut open the window screen, climbed in, took the wallet, and left. Johnson said he later threw the wallet in an area where a road surveyor later found it.

Johnson v. State, 660 So. 2d 637 (Fla. 1995). A jury found Defendant guilty of first degree murder and recommended death by a vote of 10-to-2. Id. at 641. The Court found 3 aggravating factors and 15 mitigating factors. Id. Finding that each aggravating factor alone outweighed all mitigating factors, the Court sentenced Defendant to death. Id. On direct appeal, the Florida Supreme Court affirmed Defendant's judgment and sentence. Id. at 648. Defendant's subsequent petition for writ of certiorari was denied by the United States Supreme Court on April 22, 1996. Johnson v. Florida, 517 U.S. 1159 (1996).

Defendant filed his initial postconviction motion in March of 1997. Johnson v. State, 104 So. 3d 1010, 1015 (Fla. 2012). In an amended motion filed September 15, 2003, Defendant argued that Florida's death sentencing statute was unconstitutional under Ring v. Arizona, 536 U.S. 584 (2002). 104 So. 3d at 1028. Following an evidentiary hearing, the Court denied the motions. Id. at 1016-17. The Florida Supreme Court affirmed the ruling. Id. at 1032.

Defendant filed a successive postconviction motion on December 9, 2015, based on newly discovered evidence regarding forensic microscopic hair comparison analysis used during his trial. Johnson v. State, SC16-959, 2016 WL 7176765 (Fla. Dec. 9, 2016). The Court summarily denied the motion, and the ruling was affirmed on appeal. Id.

#### **Case History for Victim Jackie McCahon**

On November 4, 1988, Defendant was indicted for the first degree murder of Jackie McCahon in Case No. 1988-CF-3200. The Florida Supreme Court summarized the facts of the case:

On September 22, 1988, Sarasota police found Jackie McCahon's body on a sidewalk in front of her residence. She had been stabbed nineteen times, and twelve of the wounds were fatal. A broken-off piece of a knife blade was found in her body. Blood spatter evidence suggested that McCahon had been attacked as she opened the door, or while inside a bathroom. Police at first suspected several men, but later turned their attention to a tenant of McCahon's named Emanuel Johnson. When first questioned, Johnson said he had heard police cars arrive and had gone out to see what was happening,

but that he did not know McCahon was the victim until someone told him so the next day.

After a lengthy police interrogation, however, Johnson confessed. He said he had gone to McCahon's residence to say he needed to use her phone because his wife was about to give birth. McCahon knew that Johnson's wife was pregnant. When McCahon let Johnson in the door, he grabbed her and choked her to semi-consciousness. Then he found a knife, stabbed her several times, cut the phone cord, then took twenty dollars he found. Later, Johnson stated that he then went across the street to his apartment, but saw McCahon stagger out of her residence on to the sidewalk. At this point Johnson said he took a knife from his apartment, went out, and stabbed McCahon repeatedly. Police later found a broken knife handle where Johnson said he had thrown the second knife. It matched the broken blade found in the body.

Johnson v. State, 660 So. 2d 648, 652 (Fla. 1995). A jury found Defendant guilty of first degree murder and armed robbery and recommended death by a vote of 10-to-2. Id. The Court found 3 aggravating factors and 15 mitigating factors. Id. Finding that each aggravating factor outweighed all mitigating factors, the Court sentenced Defendant to death. Id. On direct appeal, the Florida Supreme Court affirmed Defendant's judgment and sentence. Id. at 664. Defendant's subsequent petition for writ of certiorari was denied by the United States Supreme Court on April 22, 1996. Johnson v. Florida, 517 U.S. 1159 (1996).

Defendant filed his initial Rule 3.851 postconviction motion in March of 1997. Johnson v. State, 104 So. 3d 1032, 1034 (Fla. 2012). In an amended motion filed March 4, 2002, Defendant raised a Ring-like challenge to Florida's death sentencing statute. Following an evidentiary hearing, the Court denied the

motions. Id. at 1039-41. The Florida Supreme Court affirmed the ruling. Id. at 1043.

### **The Present Motions**

In the present motions, Defendant requests that the Court vacate his death sentences because he is entitled to relief under Hurst v. Florida, 136 S. Ct. 616 (2016), and its Florida progeny. Motions under Rule 3.851 generally must be filed within one year of the date the judgment and sentence become final. Fla. R. Crim. P. 3.851(d). Defendant's death sentence in each of these cases became final when the U.S. Supreme Court denied his certiorari petitions on April 22, 1996.

Defendant argues that the present motions are nonetheless timely under Rule 3.851(d)(2)(B), which provides an exception where a motion asserts a fundamental constitutional right not established within the one-year window that has been held to apply retroactively. Specifically, Defendant argues that the present motions were timely filed within one year of: (1) issuance of Hurst v. Florida; (2) enactment of Chapter 2016-13, Laws of Florida; (3) issuance of Perry v. State, 210 So. 3d 630 (Fla. 2016); and (4) issuance of Hurst v. State, 202 So. 3d 40 (Fla. 2016). The timeliness of Defendant's motions turns on whether the fundamental constitutional rights espoused in these decisions have been held to apply retroactively to Defendant.

Defendant argues that the Florida Supreme Court's decision in Mosley v. State, 209 So. 3d 1248 (Fla. 2016), requires retroactive application of Hurst v. Florida to two classes of defendants: (1) those whose sentences became final after the U.S. Supreme Court issued its opinion in Ring v. Arizona, 536 U.S. 584 (2002); and (2) those who specifically raised and preserved a claim of Ring-like error at trial. Indeed, Mosley addressed retroactive application of Hurst v. Florida and Hurst v. State under two approaches. First, the court held that Mosley was entitled to retroactive application under the fundamental fairness analysis established in James v. State, 615 So. 2d 668 (Fla. 1993), because he "raised a Ring claim at his first opportunity and was then rejected at every turn." 209 So. 3d at 1275. Second, the court separately found that Mosley was entitled to retroactive application based upon a Witt v. State, 387 So. 2d 922 (Fla. 1980), analysis. 209 So. 3d at 1283.

Defendant argues that because he raised a Ring-like claim in his original postconviction motions, he is entitled to retroactive relief pursuant to the fundamental fairness as contemplated in James. However, the fundamental fairness analysis in Mosley begins by noting that Mosley's crimes occurred after Ring and his Ring claims were denied at trial and on direct appeal. Id. at 1274. Defendant's crimes occurred long before Ring, his death sentences became final

approximately 6 years before Ring, and he did not raise a Ring-like claim at trial or on direct appeal.

Moreover, on the same day the Florida Supreme Court decided Mosley, it also decided Asay v. State, 210 So. 3d 1 (Fla. 2016), which addressed retroactive relief under Hurst v. Florida where, as here, the defendant's death sentence became final before Ring. The court conducted a Witt analysis and concluded that "Hurst should not be applied retroactively to Asay's case, in which the death sentence became final before the issuance of Ring." 210 So. 3d at 22. In fact, Mosley clarified the nature of Asay's holding: "we have now held in Asay v. State, that Hurst does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in Ring." 209 So. 3d at 1274. Subsequent decisions from the Florida Supreme Court have further solidified this use of Ring as a bright-line cutoff for retroactive relief under Hurst v. Florida and its Florida progeny. See, e.g., Gaskin v. State, 42 Fla. L. Weekly S16 (Fla. Jan. 19, 2017) ("Because Gaskin's sentence became final in 1993, Gaskin is not entitled to relief under Hurst v. Florida."); Bogle v. State, 42 Fla. L. Weekly S166 (Fla. Feb. 9, 2017) ("Bogle is not, however, entitled to Hurst relief because Hurst does not apply retroactively to cases that were final before Ring was decided."); Archer v. Jones, SC16-2111, 2017 WL 1034409 (Fla. Mar. 17, 2017) ("We hereby deny Archer's petition pursuant to our holding in Asay[] that Hurst v.

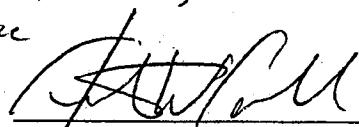
Florida and Hurst v. State do not apply retroactively to capital defendants whose death sentences were final when Ring[] was decided.”).

While Defendant’s analysis of Florida’s post-Hurst retroactivity opinions is well taken, he does not cite to—and the Court is not aware of—any decision affording the retroactive relief now sought to a defendant whose death sentence became final before Ring. To the contrary, the recent decisions cited above uniformly denied retroactive Hurst relief solely on the basis of pre-Ring finality. Because the fundamental constitutional rights underlying Defendant’s motions have not been held to apply retroactively to him, the present motions are untimely under Rule 3.851(d). In light of this determination, the Court need not reach the matter of whether any Hurst error in these cases was harmless.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Defendant’s successive motions for postconviction relief are **DENIED**. Defendant shall have thirty (30) days from rendition of this order to file an appeal.

**DONE AND ORDERED** in Manatee County, Florida, on 6/28/2017.

*NUC pro tem to 4/24/2017 as original became lost  
between Clerk's & Clerk's office*



Hunter W. Carroll, Circuit Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29 day of June 2017, a copy of the foregoing order was furnished to: **Timothy A. Freeland**, Assistant Attorney General, timothy.freeland@myfloridalegal.com, 3507 E. Frontage Rd., Suite 200, Tampa, FL 33607-7013; **Mark S. Gruber** and **Julie A. Morley**, Assistant CCRC, gruber@ccmr.state.fl.us, morley@ccmr.state.fl.us, 12973 N. Telecom Parkway, Temple Terrace, FL 33637-0907; and **Karen Fraivillig**, Assistant State Attorney, kfraivillig@scgov.net, 2071 Ringling Blvd., Sarasota, FL 34237.

Donna M. McCormick  
Judicial Assistant

## APPENDIX D

# Supreme Court of Florida

MONDAY, JULY 31, 2017

CASE NO.: SC17-1401

Lower Tribunal No(s):

581988CF003198XXXANC; 581988CF003199XXXANC

EMANUEL JOHNSON

vs. STATE OF FLORIDA

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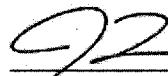
Appellant(s)

Appellee(s)

This appeal is stayed pending disposition of Hitchcock v. State, SC17-445. The record on appeal must be transmitted in accordance with the July 31, 2017, order of this Court.

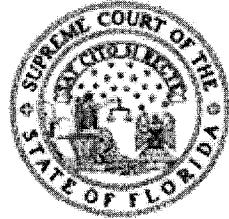
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Test:



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John A. Tomasino  
Clerk, Supreme Court



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Served:

JULIE A. MORLEY  
MARK S. GRUBER  
TIMOTHY ARTHUR FREELAND  
HON. HUNTER W. CARROLL, JUDGE, JUDGE  
HON. KAREN E. RUSHING, CLERK  
KAREN FRAIVILLIG  
OFFICIAL COURT REPORTERS

## APPENDIX E

# Supreme Court of Florida

MONDAY, JULY 31, 2017

CASE NO.: SC17-1402

Lower Tribunal No(s):

581988CF003200XXXANC; 581988CF003438XXXANC

EMANUEL JOHNSON

vs. STATE OF FLORIDA

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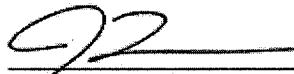
Appellant(s)

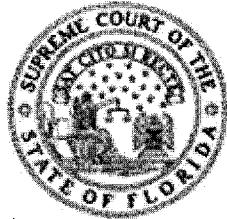
Appellee(s)

This appeal is stayed pending disposition of Hitchcock v. State, SC17-445. The record on appeal must be transmitted in accordance with the July 31, 2017, order of this Court.

A True Copy

Test:

  
John A. Tomasino  
Clerk, Supreme Court



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Served:

JULIE A. MORLEY  
TIMOTHY ARTHUR FREELAND  
MARK S. GRUBER  
OFFICIAL COURT REPORTERS  
HON. KAREN E. RUSHING, CLERK  
HON. HUNTER W. CARROLL, JUDGE, JUDGE  
KAREN FRAIVILLIG

## APPENDIX F

# Supreme Court of Florida

WEDNESDAY, SEPTEMBER 27, 2017

CASE NO.: SC17-1401

Lower Tribunal No(s).:

581988CF003198XXXANC; 581988CF003199XXXANC

EMANUEL JOHNSON

vs. STATE OF FLORIDA

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Appellant(s)

Appellee(s)

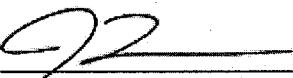
Appellant shall show cause on or before Tuesday, October 17, 2017, why the trial court's order should not be affirmed in light of this Court's decision Hitchcock v. State, SC17-445. The response shall be limited to no more than 20 pages.

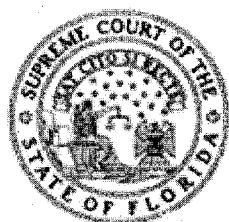
Appellee may file a reply on or before Wednesday, November 1, 2017, limited to no more than 15 pages. Appellant may file a reply to the Appellee's reply on or before Monday, November 13, 2017, limited to no more than 10 pages.

Motions for extensions of time will not be considered unless due to a medical emergency.

A True Copy

Test:

  
John A. Tomasino  
Clerk, Supreme Court



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Served:

JULIE A. MORLEY  
MARK S. GRUBER  
TIMOTHY ARTHUR FREELAND

## APPENDIX G

# Supreme Court of Florida

WEDNESDAY, SEPTEMBER 27, 2017

CASE NO.: SC17-1402

Lower Tribunal No(s):

581988CF003200XXXANC; 581988CF003438XXXANC

EMANUEL JOHNSON

vs. STATE OF FLORIDA

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Appellant(s)

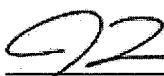
Appellee(s)

Appellant shall show cause on or before Tuesday, October 17, 2017, why the trial court's order should not be affirmed in light of this Court's decision Hitchcock v. State, SC17-445. The response shall be limited to no more than 20 pages. Appellee may file a reply on or before Wednesday, November 1, 2017, limited to no more than 15 pages. Appellant may file a reply to the Appellee's reply on or before Monday, November 13, 2017, limited to no more than 10 pages.

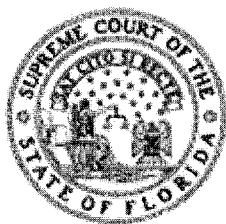
Motions for extensions of time will not be considered unless due to a medical emergency.

A True Copy

Test:



John A. Tomasino  
Clerk, Supreme Court



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Served:

JULIE A. MORLEY  
TIMOTHY ARTHUR FREELAND  
MARK S. GRUBER

## APPENDIX H

# Supreme Court of Florida

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No. SC17-1401

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**EMANUEL JOHNSON,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

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No. SC17-1402

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**EMANUEL JOHNSON,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[February 2, 2018]

PER CURIAM.

We have for review Emanuel Johnson's appeals of the circuit court's order denying his motions filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Johnson's motions 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 Johnson's appeals pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, No. 17-6180, 2017 WL 4355572 (U.S. Dec. 4, 2017). After this Court decided Hitchcock, Johnson responded to this Court's orders to show cause arguing why Hitchcock should not be dispositive in his cases.

After reviewing Johnson's responses to the order to show cause, as well as the State's arguments in reply, we conclude that Johnson is not entitled to relief. Johnson was sentenced to death for the murder of Iris White following a jury's recommendation for death by a vote of eight to four. Johnson v. State, 660 So. 2d 637, 641 (Fla. 1995). Johnson was also sentenced to death for the murder of Jackie McCahon following a jury's recommendation for death by a vote of ten to two. Johnson v. State, 660 So. 2d 648, 652 (Fla. 1995). Both of Johnson's sentences of death became final in 1996. Johnson v. Florida, 116 S. Ct. 1550, 1550 (1996); Johnson v. Florida, 116 S. Ct. 1550, 1551 (1996). Thus, Hurst does not apply

retroactively to Johnson's sentences of death. See Hitchcock, 226 So. 3d at 217.

Accordingly, we affirm the denial of Johnson's motions.

The Court having carefully considered all arguments raised by Johnson, 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, 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 Sarasota County,

Hunter W. Carroll, Judge - Case Nos. 581988CF003198XXXANC  
and 581988CF003199XXXANC

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, Mark S. Gruber and Julie A. Morley, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Timothy A. Freeland, Senior Assistant Attorney General, Tampa, Florida,

for Appellee

## APPENDIX I

# MANDATE

## SUPREME COURT OF FLORIDA

*To the Honorable, the Judges of the:*

**Circuit Court in and for Sarasota County, Florida**

*WHEREAS, in that certain cause filed in this Court styled:*

**EMANUEL JOHNSON vs. STATE OF FLORIDA**

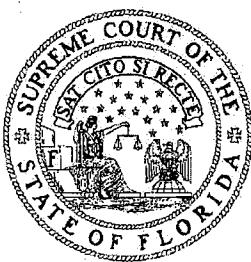
*Case Nos.: SC17-1401 & SC17-1402*

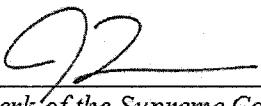
*Your Case No.: 581988CF003198XXXANC; 581988CF003199XXXANC;  
581988CF003438XXXANC; 581988CF003200XXXANC*

*The attached opinion was rendered on: 02/02/2018*

*YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.*

*WITNESS, The Honorable JORGE LABARGA, Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 20th day of February 2018.*



  
\_\_\_\_\_  
*Clerk of the Supreme Court of Florida*