

ATTACHMENT A

236 So.3d 238
Supreme Court of Florida.

Thomas M. OVERTON, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-1435

|

[February 2, 2018]

Synopsis

Background: After affirmance of defendant's murder conviction and death sentence, 801 So.2d 877, defendant filed a motion for collateral relief. The Circuit Court, Monroe County, No. 441996CF030167000APK, Mark H. Jones, C.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 on two murder counts following a jury's recommendation for death by a vote of nine to three on one count and a vote of eight to four on another count, and his sentence became final approximately 14 years before *Hurst* was issued.

Cases that cite this headnote

An Appeal from the Circuit Court in and for Monroe County, Mark H. Jones, Chief Judge—Case No. 441996CF030167000APK

Attorneys and Law Firms

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Opinion

PER CURIAM.

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

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

After reviewing Overton's response to the order to show cause, as well as the State's arguments in reply, we conclude that Overton is not entitled to relief. After a jury convicted Overton of two counts of first degree murder, he was sentenced to death on both counts following a jury's recommendation for death by a vote of nine to three on one count and a vote of eight to four on another count. Overton v. State, 801 So.2d 877, 888–89 (Fla. 2001). Overton's sentences of death became final in 2002. Overton v. Florida, 535 U.S. 1062, 122 S.Ct. 1929, 152 L.Ed.2d 835 (2002). Thus, Hurst does not apply retroactively to Overton's sentences of death. See Hitchcock, 226 So.3d at 217. Accordingly, we affirm the denial of Overton's motion.

The Court having carefully considered all arguments raised by Overton, 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

236 So.3d 238, 44 Fla. L. Weekly S78

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