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April 30, 2018

Scott S. Harris, Clerk
Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

RE: Michael Allen Griffin v. State of Florida, Case No. _____

Dear Sir:

Enclosed please find an application for sixty day extension of time in which to file Mr. Griffin's petition for writ of certiorari to the Florida Supreme Court and a motion for leave to proceed *in forma pauperis*.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Martin J. McClain
Attorney at Law

cc: Melissa Roca Shaw, Assistant Attorney General

DOCKET NO. _____
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

MICHAEL ALLEN GRIFFIN,
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, MICHAEL ALLEN GRIFFIN, by and through undersigned counsel, and pursuant to Supreme Court Rule 13.5, respectfully requests an extension of time 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 as follows:

1. Petitioner is a death-sentenced inmate in the custody of the State of Florida. This case involves a capital appeal to the Florida Supreme Court from the denial of post conviction relief.

2. This Court's jurisdiction rests on 28 U.S.C. §1257.

3. Petitioner was convicted of murder and sentenced to death in the circuit court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

4. On February 2, 2018, Petitioner's appeal was denied by the Florida Supreme Court (Attachment A). Petitioner's time to petition for certiorari in this Court expires May 3, 2018.

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

6. Petitioner's lead counsel, who is court-appointed in this matter, has had a burdensome caseload since the final disposition of Petitioner's case in the Florida Supreme Court. In addition, counsel's 94 year-old father was hospitalized in Springfield, Illinois on April 6, 2018. As a result, counsel had to travel to Illinois for the resulting family emergency. After his father was discharged and moved to a rehab facility on April 18, 2018, counsel returned to his home in Fort Lauderdale late on April 21, 2018. The family emergency and counsel's already burdensome case load left Petitioner's counsel unable to prepare a proper petition for a writ of certiorari. As a result, counsel has to ask for a sixty day extension to be able to prepare a proper petition for a writ of certiorari in Petitioner's case.

WHEREFORE, Petitioner, through his undersigned counsel, respectfully requests an extension of time of sixty (60) days within which to file the Petition for Writ of Certiorari to the Florida Supreme Court in the above-styled case.

I HEREBY CERTIFY that a true copy of the foregoing application has been furnished by electronic service to all counsel of record on April 30, 2018.

/s/ Martin J. McClain
MARTIN J. MCCLAIN
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Attorney for Michael Allen Griffin

ATTACHMENT A

236 So.3d 237
Supreme Court of Florida.

Michael Allen GRIFFIN, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-1306

|

[February 2, 2018]

Synopsis

Background: After affirmance of defendant's murder conviction and death sentence, 639 So.2d 966, and denial of habeas corpus relief, 22 So.3d 67, defendant filed a motion for collateral relief. The Circuit Court, Dade County, No. 131990CF016875C000XX, Diane Valentina Ward, 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 ten to two, 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 Dade County, Diane Valentina Ward, Judge—Case No. 131990CF016875C000XX

Attorneys and Law Firms

Martin J. McClain of McClain & McDermott, P.A., Wilton Manors, Florida, for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Melissa J. Roca, Assistant Attorney General, Miami, Florida, for Appellee

Opinion

PER CURIAM.

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

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

***238** After reviewing Griffin's response to the order to show cause, as well as the State's arguments in reply, we conclude that Griffin is not entitled to relief. Griffin was sentenced to death following a jury's recommendation for death by a vote of ten to two. *Griffin v. State*, 639 So.2d 966, 968 (Fla. 1994). Griffin's sentence of death became final in 1995. *Griffin v. Florida*, 514 U.S. 1005, 115 S.Ct. 1317, 131 L.Ed.2d 198 (1995). Thus, *Hurst* does not apply

retroactively to Griffin's sentence of death. See Hitchcock, 226 So.3d at 217. Accordingly, we affirm the denial of Griffin's motion.

The Court having carefully considered all arguments raised by Griffin, 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 237, 2018 WL 671475, 44 Fla. L. Weekly S77

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DOCKET NO. _____

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

MICHAEL ALLEN GRIFFIN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

COMES NOW, the Petitioner, MICHAEL ALLEN GRIFFIN, by and through undersigned counsel, and moves for leave of this Court to proceed *in forma pauperis* in this proceeding. Petitioner has been found indigent by each state and federal court in which he has challenged this conviction and sentence and has been permitted to proceed *in forma pauperis* before each of those courts: the Florida Supreme Court; the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida; the United States District Court for the Southern District of Florida; and the Eleventh Circuit Court of Appeals.

Undersigned counsel was assigned to serve as Mr. Griffin's Capital Collateral Registry Counsel pursuant to Florida

Statute §27.710 (2017). As a result, the State of Florida pays undersigned counsel's attorney fees and expenses.

Undersigned counsel is a member of the Florida Bar.

WHEREFORE, Petitioner moves the Court for leave to proceed in this action *in forma pauperis*.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first-class postage prepaid, to all counsel of record on April 30, 2018.

/s/ Martin J. McClain
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