

237 So.3d 924
Supreme Court of Florida.

Paul Anthony BROWN, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-2086

|

[February 28, 2018]

Synopsis

Background: Defendant filed motion for collateral relief, after his conviction and death sentence were affirmed on appeal, [721 So.2d 274](#). The Circuit Court, Volusia County, No. 641992CF034756XXXAES, [Terence R. Perkins, J.](#), denied the motion. Defendant appealed.

[Holding:] The Supreme Court held that requirement that jury find each fact necessary to impose death sentence did not apply retroactively.

Affirmed

[Pariente, J.](#), concurred in result and filed opinion.

[Lewis](#) and [Canady, JJ.](#), concurred in result.

West Headnotes (1)

[1] Courts

 In general;retroactive or prospective operation

Criminal Law

 Change in the law

Requirement that jury to find each fact necessary to impose death sentence did not apply retroactively, and therefore defendant was not entitled to collateral relief from death sentence. [Fla. R. Crim. P. 3.851](#).

[Cases that cite this headnote](#)

***925** An Appeal from the Circuit Court in and for Volusia County, [Terence R. Perkins](#), Judge—Case No. 641992CF034756XXXAES

Attorneys and Law Firms

[Linda McDermott](#) of McClain & McDermott, P.A., Estero, Florida, for Appellant

[Pamela Jo Bondi](#), Attorney General, Tallahassee, Florida, and [Doris Meacham](#), Assistant Attorney General, Daytona Beach, Florida, for Appellee

Opinion

PER CURIAM.

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

Brown'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). After this Court decided *Hitchcock v. State*, 226 So.3d 216 (Fla.), *cert. denied*, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017), Brown responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Brown's response to the order to show cause, as well as the State's arguments in reply, we conclude that Brown is not entitled to relief. Brown was sentenced to death following a jury's unanimous recommendation for death. *Brown v. State*, 721 So.2d 274, 276–77 (Fla. 1998). Brown's sentence of death became final in 1999. *Brown v. Florida*, 526 U.S. 1102, 119 S.Ct. 1582, 143 L.Ed.2d 677 (1999). Thus, *Hurst* does not apply retroactively to Brown's sentence of death. *See Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Brown's motion.

The Court having carefully considered all arguments raised by Brown, 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, *926 — 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

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