

Supreme Court of Florida

No. SC17-1765

MARK ALLEN GERALDS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[February 28, 2018]

PER CURIAM.

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

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

After reviewing Gerald's response to the order to show cause, as well as the State's arguments in reply, we conclude that Gerald is not entitled to relief. Gerald was sentenced to death following a jury's unanimous recommendation for death. *Gerald v. State*, 674 So. 2d 96, 98 (Fla. 1996). Gerald's sentence of death became final in 1996. *Gerald v. Florida*, 519 U.S. 891 (1996). Thus, *Hurst* does not apply retroactively to Gerald's sentence of death. See *Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Gerald's motion.

The Court having carefully considered all arguments raised by Gerald, 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*, 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 Bay County,
Brantley S. Clark, Jr., Judge - Case No. 031989CF000495XXAXMX

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