

237 So.3d 923
 Supreme Court of Florida.
 Mark Allen GERALDS, Appellant,
 v.
 STATE of Florida, Appellee.
 No. SC17-1765
 |
 [February 28, 2018]

Synopsis

Background: Defendant filed motion for collateral relief after his conviction was affirmed on appeal, [601 So.2d 1157](#), and after his death sentence was affirmed on appeal, [674 So.2d 96](#). The Circuit Court, Bay County, No. 031989CF000495XXAXMX, [Brantley S. Clark, Jr., 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 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](#)

*924 An Appeal from the Circuit Court in and for Bay County, [Brantley S. Clark, Jr.](#), Judge—Case No. 031989CF000495XXAXMX

Attorneys and Law Firms

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[Pamela Jo Bondi](#), Attorney General, and [Lisa A. Hopkins](#), Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

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

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

[1] After reviewing Gerals' response to the order to show cause, as well as the State's arguments in reply, we conclude that Gerals is not entitled to relief. Gerals was sentenced to death following a jury's unanimous recommendation for death. *Gerals v. State*, 674 So.2d 96, 98 (Fla. 1996). Gerals' sentence of death became final in 1996. *Gerals v. Florida*, 519 U.S. 891, 117 S.Ct. 230, 136 L.Ed.2d 161 (1996). Thus, *Hurst* does not apply retroactively to Gerals' sentence of death. *See Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Gerals' motion.

The Court having carefully considered all arguments raised by Gerals, 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

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