CAPITAL CASE

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

LOUIS B. GASKIN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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APPENDIX A: The order of the Circuit Court of the Seventh Judicial Circuit denying the Second Successive Motion to Vacate Judgment of Conviction and Sentence at issue. (Unreported).

IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT, IN
AND FOR FLAGLER COUNTY,
FLORIDA

CASE NO.: 1990 CF 01; 1990 CF 07
DIVISION: 56

STATE OF FLORIDA,

vs.

LOUIS B. GASKIN,
Defendant.
_____/

ORDER ON DEFENDANT'S SECOND SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCES

THIS CAUSE came before the Court on Defendant's second "Successive Motion to Vacate Judgment of Conviction and Sentences" filed pursuant to Rule 3.851, Florida Rules of Criminal Procedure on January 10, 2017. The Court has reviewed and considered Defendant's motion and the State's response[1] thereto, has heard and considered the argument of counsel presented at the October 2, 2017 case management conference and the supplemental authority filed thereafter, and being fully advised in the premises finds as follows:

In 1989, Defendant was convicted of four counts of first degree murder in the deaths of Robert and Georgette Sturmfels (premeditated and felony murder), the

[1] The State filed a Motion to Dismiss Successive Motion to Vacate on February 10, 2017 in which it argued the present motion should be dismissed or in the alternative, summarily denied following a case management conference.

attempted murder of Joseph Rector, two counts of armed robbery with a firearm and two counts of burglary with a firearm. The jury recommended death for both murders and the court imposed the death penalty for both murders. Defendant was sentenced to consecutive life sentences for the non-capital offenses. On December 5, 1991, the Florida Supreme Court affirmed Defendant's premeditated murder convictions and two death sentences, reversed the two felony murder convictions that were duplicative of the premeditated murder convictions, and remanded to the trial court for proceedings consistent with its decision. *Gaskin v. State*, 591 So. 2d 917 (Fla. 1991). Defendant's sentences became final in 1993 when the United States Supreme Court denied certiorari relief. *Gaskin v. State*, 510 U.S. 925 (1993). Defendant's initial motion for post-conviction relief was denied on August 23, 2000 after an evidentiary hearing. The Florida Supreme Court affirmed the denial on June 13, 2002. *Gaskin v. State*, 822 So. 2d 1243 (Fla. 2002). On June 25, 2003, Defendant filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Florida. The petition for writ of habeas corpus was denied on March 23, 2006. On August 3, 2007, the Eleventh Circuit affirmed the denial of habeas relief. *Gaskin v. Secretary, Department of Corrections*, 494 F. 3d 997 (11th Cir. 2007). On August 12, 2014, pursuant to the Florida Supreme Court's 1991 directive, the Court issued a corrected judgment and sentence vacating the felony murder convictions for each victim. On May 6, 2015, Defendant filed his

First Successive Motion to Vacate Judgment of Conviction and Sentence. On August 6, 2015, the Court rendered an Order Denying First Successive Motion to Vacate Judgment of Conviction and Sentence. Defendant appealed and the Court's Order was affirmed on January 19, 2017. In affirming the Court's denial of Defendant's First Successive Motion to Vacate Judgment of Conviction and Sentence, the Florida Supreme Court held that any *Hurst* error did not require resentencing because *Hurst* is not retroactive to cases that were final when *Ring* was decided. *Gaskin v. State*, 218 So. 3d 399, 401 (Fla. 2017), *reh'g denied,* SC15-1884, 2017 WL 2210388 (Fla. May 17, 2017).

Presently before the Court is Defendant's second "Successive Motion to Vacate Judgment of Conviction and Sentences," filed January 10, 2017. The Defendant seeks to have his death sentence vacated pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So.3d 40 (Fla. 2016). Additionally, many of Defendant's arguments flow from some of the more nuanced matters inherent in Florida's post-*Hurst* retroactivity decisions, including whether a *Ring*-like challenge was previously raised, a distinction between the Sixth Amendment and Eighth Amendment issues addressed in *Hurst v. State*, substantive versus procedural rule changes and applicability of the Supremacy Clause, and the potentially arbitrary effects of using *Ring* as a bright-line cutoff for retroactivity. However, the Florida Supreme Court's recent decisions clearly establish that

defendants whose sentences of death became final pre-*Ring* are not entitled to relief via retroactive application of *Hurst v. Florida* and its Florida progeny.

Because the Defendant's judgment and sentence became final in 1993, before the *Ring v. Arizona*, 536 U.S. 583 (2002) opinion was issued on June 24, 2002, the Defendant is not entitled to retroactive *Hurst* relief. *See Asay v. State*, 210 So. 3d 1 (Fla. 2016), *reh'g denied,* SC16-102, 2017 WL 431741 (Fla. Feb. 1, 2017), *cert. denied,* 16-9033, 2017 WL 1807588 (U.S. Aug. 24, 2017); *Asay v. State*, 42 Fla. L. Weekly S755 (Fla. Aug. 14, 2017); *Hitchcock v. State*, 42 Fla. L. Weekly S753 (Fla. Aug. 10, 2017), *reh'g denied,* SC17-445, 2017 WL 4118830 (Fla. Sept. 18, 2017); *Lambrix v. State*, SC17-1687, 2017 WL 4320637, at *1 (Fla. Sept. 29, 2017). Regarding Defendant's contention that his case became final in 2014 when the trial court vacated the two felony murder convictions, the Florida Supreme Court specifically held that Defendant's judgment and sentence became final in 1993 when the United States Supreme Court denied certiorari review. *Gaskin v. State*, 218 So. 3d at 401. Further, the Court incorporates by reference the State's response and the State's hearing argument, and adopts the State's reasoning in finding the remaining claims procedurally barred and/or beyond the scope of *Hurst* relief.

Finally, the timeliness of the instant motion turns on whether *Hurst v. Florida* and its Florida progeny have been held to apply retroactively to Defendant. Rule 3.851(d) provides, in relevant part, that "any motion to vacate judgment of

conviction and sentence of death shall be filed by the defendant within 1 year after the judgment and sentence become final" unless "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively." Fla. R. Crim. P. 3.851. Because *Hurst* and the fundamental constitutional rights relied on by Defendant have not been held to apply retroactively to defendants whose judgment and sentence became final prior to *Ring*, the instant motion is untimely under Rule 3.851(d).

Defendant is not entitled to relief under any of his current claims, all of which depend upon a retroactive application of *Hurst*, because his judgment and sentence became final in 1993. Accordingly, it is:

ORDERED AND ADJUDGED that:

1. Defendant's second "Successive Motion to Vacate Death Sentence" is hereby DENIED.

2. Defendant shall have 30 days from the date of this Order to appeal this Court's decision.

DONE AND ORDERED in Chambers, in St. Johns County, St. Augustine, Florida, this 12th day of October, 2017.

HOWARD M. MALTZ
Circuit Judge

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APPENDIX B: The opinion of the Supreme Court of Florida following appeal of the denial of Petitioner's Second Successive Motion to Vacate. *Gaskin v. State*, 237 So.3d 928 (Fla. 2018)

237 So.3d 928
Supreme Court of Florida.

Louis B. GASKIN, Appellant,
v.
STATE of Florida, Appellee.

No. SC17–2190
|
[February 28, 2018]

Synopsis
Background: Defendant filed motion for collateral relief, after his murder convictions and death sentences were affirmed on appeal, 615 So.2d 679. The Circuit Court, Flagler County, Nos. 181990CF000001AXXXXX and 181990CF000007XXXXXX, Howard M. Maltz, J., denied the motion. Defendant appealed.

[Holding:] The Supreme Court held that requirement that jury recommend death sentence by unanimous vote did not apply retroactively.

Affirmed.

Pariente, J., concurred in result and filed opinion.

Lewis and Canady, JJ., concurred in result.

***929** An Appeal from the Circuit Court in and for Flagler County, Howard M. Maltz, Judge—Case Nos. 181990CF000001AXXXXX and 181990CF000007XXXXXX

Attorneys and Law Firms

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Opinion

PER CURIAM.

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

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

[1] After reviewing Gaskin's response to the order to show cause, as well as the State's arguments in reply, we conclude that Gaskin is not entitled to relief. Gaskin was sentenced to two sentences of death following a jury's recommendation for "two death sentences for [two] murders [both] by a vote of eight to four." *Gaskin v. State*, 218 So.3d 399, 400 (Fla. 2017) (citing *Gaskin v. State*, 591 So.2d 917, 919 (Fla. 1991)). Gaskin's sentence of death became final in 1993. *Id.* at 401. Thus, as this Court has previously determined, *Hurst* does not apply retroactively to Gaskin's sentence of death. *See Hitchcock*, 226 So.3d at 217; *Gaskin*, 218 So.3d at 401 (denying Gaskin's claim to relief under *Hurst v. Florida*). Accordingly, we affirm the denial of Gaskin's motion.

The Court having carefully considered all arguments raised by Gaskin, 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

237 So.3d 928, 43 Fla. L. Weekly S114

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APPENDIX C: The opinion of the Supreme Court of Florida following direct appeal of Petitioner's judgment and sentence of death. *Gaskin v. State*, 591 So.2d 917 (Fla. 1991).

591 So.2d 917
Supreme Court of Florida.

Louis B. GASKIN, Appellant,
v.
STATE of Florida, Appellee.

No. 76326.
|
Dec. 5, 1991.

Synopsis
Defendant was convicted of first-degree murder and related offenses, following jury trial in the Circuit Court, Flagler County, Kim C. Hammond, J., and defendant appealed. The Supreme Court, Barkett, J., held that: (1) defendant was not entitled to change of venue; (2) trial court improperly convicted defendant of both premeditated and felony-murder for each death; and (3) trial court properly considered aggravating and mitigating circumstances.

Affirmed in part, vacated in part, and remanded.

Attorneys and Law Firms

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Robert A. Butterworth, Atty. Gen. and Barbara C. Davis, Asst. Atty. Gen., Daytona Beach, for appellee.

Opinion

BARKETT, Justice.

Louis B. Gaskin appeals from convictions for first-degree murder and related offenses and sentences, including the death penalty. [1]

1 We have jurisdiction pursuant to article V, section 3(b)(1) of the Florida Constitution.

The convictions arise from events occurring on the night of December 20, 1989, when Gaskin drove from Bunnell to Palm Coast and spotted a light in the house of the victims, Robert and Georgette Sturmfels. Gaskin parked his car in the woods and, with a loaded gun, approached the house. Through a window he saw the Sturmfels sitting in their den. After circling the house a number of times, Gaskin shot Mr. Sturmfels twice through the window. As Mrs. Sturmfels rose to leave the room, Gaskin shot her and then shot Mr. Sturmfels a third time. Mrs. Sturmfels crawled into the hallway, and Gaskin pursued her around the house until he saw her through the door and shot her again. Gaskin then pulled out a screen, broke the window, and entered the home. He fired one more bullet into each of the Sturmfels' heads and covered the bodies with blankets. Gaskin then went through the house taking lamps, video cassette recorders, some cash, and jewelry.

Gaskin then proceeded to the home of Joseph and Mary Rector, whom he again spied through a window sitting in their den. While Gaskin cut their phone lines, the Rectors went to bed and turned out the lights. In an effort to roust Mr. Rector, Gaskin threw a log and some rocks at the house. When Mr. Rector rose to investigate, Gaskin shot him from

outside the house. The Rectors managed to get to their car and drive to the hospital in spite of additional shots fired at their car as they sped away. Gaskin then burglarized the house.

Gaskin's involvement in the shootings was brought to the attention of the authorities by Alfonso Golden, cousin of Gaskin's girlfriend. The night of the murders, Gaskin had appeared at Golden's home and asked to leave some "Christmas presents." Gaskin told Golden that he had "jacked" the presents and left the victims "stiff." Golden learned of the robberies and murders after watching the news and called the authorities to report what he knew. The property that had been left with Golden was subsequently identified as belonging to the Sturmfels.

Gaskin was arrested on December 30, and a search of Gaskin's home produced more of the stolen items. After signing a rights-waiver form, Gaskin confessed to the crimes and directed the authorities to further evidence of the crime in a nearby canal.

The jury found Gaskin guilty of two counts of first-degree murder in the death of Robert Sturmfels (premeditated and felony murder); two counts of first-degree murder in the death of Georgette Sturmfels (premeditated and first-degree murder); one count of armed robbery of the Sturmfels; one count of burglary of the Sturmfels' home; one count of attempted first-degree murder of Joseph Rector; one count of armed robbery of the Rectors; and one count of burglary of the Rector's home. The jury found Gaskin not guilty of attempted first-degree murder of Mary Rector.

During the penalty phase, the State introduced ballistics evidence by firing various types of bullets from the rifle used in the murders to demonstrate that the ammunition Gaskin chose to use in the murders ***919** supports a finding that the murders were heinous, atrocious, or cruel. The defense introduced the testimony of Janet Morris, Gaskin's cousin, who testified that she and Gaskin were raised by their great-grandparents, who were very strict, and that Gaskin never gave anyone any trouble during his formative years. The jury recommended death for both murders by a vote of eight to four. In addition to the penalty phase testimony, the judge was given a certified judgment and sentence for an unrelated burglary, a copy of Gaskin's statement, and a copy of a psychiatric report by Dr. Jack Rotstein to consider in sentencing Gaskin.

The trial judge found in aggravation that (1) both murders were committed in a cold, calculated, and premeditated manner;[2] (2) Gaskin had previously been convicted of another capital offense or of a felony involving the use or threat of violence;[3] and (3) that the murders were committed while the defendant was engaged in the commission of a robbery or burglary.[4] Additionally, the trial court found that the murder of Georgette Sturmfels was especially wicked, evil, atrocious, or cruel.[5] The court found in mitigation of both murders that (1) the murders were committed while Gaskin was under the influence of extreme mental or emotional disturbance; and (2) that Gaskin had a deprived childhood. The court concluded that the aggravating circumstances outweighed the mitigating circumstances and imposed the death penalty for both murders. The court also sentenced Gaskin to consecutive life terms for the noncapital offenses.

2 *See* § 921.141(5)(i), Fla.Stat. (1987).

3 *Id.* § 921.141(5)(b). The trial judge supported this factor in Robert Sturmfels' death with the contemporaneous convictions for the offenses involving the Rectors and Georgette Sturmfels; and in Georgette Sturmfels' death, with the contemporaneous convictions involving the Rectors and Robert Sturmfels.

4 *Id.* § 921.141(5)(d).

5 *Id.* § 921.141(5)(h). The trial judge found this factor inapplicable to Robert Sturmfels because he was shot in rapid succession and died quickly.

[1] Gaskin raises numerous claims of error which he argues require a reversal of his convictions or sentences. Gaskin first argues that the trial court erroneously denied his motion for a change of venue because pretrial publicity precluded

selection of a fair and impartial jury. "An application for change of venue is addressed to a court's sound discretion, and a trial court's ruling will not be reversed absent a palpable abuse of discretion." *Davis v. State,* 461 So.2d 67, 69 (Fla.1984), *cert. denied,* 473 U.S. 913, 105 S.Ct. 3540, 87 L.Ed.2d 663 (1985). The test for changing venue is

> "whether the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely on the evidence presented in the courtroom."

Id. (quoting *Manning v. State,* 378 So.2d 274, 276 (Fla.1979). The trial court did not abuse its discretion in finding that the test had not been met here. While many of the venire admitted to knowing that the crime had been committed, those with any significant knowledge were excused. All jurors who served affirmatively and unequivocally stated that they could put aside any prior knowledge and decide the case solely on the evidence presented at trial. There is nothing in the record that suggests otherwise.

Moreover, the judge liberally excused jurors for cause when challenged, and he granted each attorney an additional five peremptory challenges, indicating that he would give more if needed. When the list of jurors chosen to sit was read, defense counsel did not request additional peremptory challenges and did not even use all the peremptory challenges available. The court also granted the defense motion for individual voir dire regarding publicity and feelings on capital punishment, and the court allowed wide latitude in the questioning. There is nothing in the record to ***920** indicate defense counsel was precluded from striking any undesirable juror. Nor has Gaskin demonstrated he was otherwise prejudiced by any knowledge the jurors may have possessed. Accordingly, on the facts presented here we find no abuse of discretion in the judge's denial of the change of venue motion.

[2] Gaskin next argues that the trial court erred in adjudicating him guilty of both premeditated and felony murder for each of the two deaths for a total of four convictions. We agree that each death will support only one adjudication. *See Lamb v. State,* 532 So.2d 1051 (Fla.1988); *Houser v. State,* 474 So.2d 1193 (Fla.1985). Accordingly, we vacate one adjudication for first-degree murder for each victim.

[3] **[4]** We reject Gaskin's claim that his constitutional rights were violated because the court stenographer did not record certain proceedings at the bench. *See Bruno v. State,* 574 So.2d 76, 81 (Fla.), *cert. denied,* 502 U.S. 834, 112 S.Ct. 112, 116 L.Ed.2d 81 (1991). We also reject Gaskin's claim that the trial court erred in instructing the jury on the definition of reasonable doubt. *See, e.g., Brown v. State,* 565 So.2d 304 (Fla.), *cert. denied,* 498 U.S. 992, 111 S.Ct. 537, 112 L.Ed.2d 547 (1990). We likewise find no merit to Gaskin's claim that the trial court erred in admitting several pieces of physical evidence. The trial court has great latitude in determining the relevance of evidence, and such determinations will not be disturbed absent an abuse of discretion. *See Hardwick v. State,* 521 So.2d 1071 (Fla.), *cert. denied,* 488 U.S. 871, 109 S.Ct. 185, 102 L.Ed.2d 154 (1988). We have reviewed the record and find no abuse in the admission of the evidence in question.

Turning to the penalty phase, we find no reversible error in Gaskin's claim that the trial judge made an impermissible comment on the evidence during the penalty phase. We also reject without discussion Gaskin's multiple assertions regarding the constitutionality of the capital-sentencing statute as each of his arguments has previously been decided adversely to his position.

Gaskin next argues that the record fails to reflect Gaskin's presence at the firing range where the State presented its ballistics evidence. To the contrary, the record reflects that the trial judge specifically stated that Gaskin was present in a patrol car with the windows rolled down so he could observe the demonstration. Defense counsel did not dispute this statement or otherwise object to the proceeding. We thus reject this claim.

[5] Finally, Gaskin alleges error in the consideration of aggravating and mitigating circumstances. Gaskin first argues that the trial court erred in finding that the murder of Georgette Sturmfels was heinous, atrocious, or cruel.[6] We find no abuse of discretion in the trial court's conclusion.

6 This argument does not apply to the death sentence imposed for Robert Sturmfels because the trial court did not find the aggravating circumstance of heinous, atrocious, or cruel. *See supra* note 5.

According to Gaskin's own statement, after twice shooting Mr. Sturmfels, "his wife realized what was going on." She tried to run away but Gaskin shot her. Gaskin turned back to Mr. Sturmfels, who was still standing, and shot him again. When Mrs. Sturmfels attempted to crawl out of view, Gaskin shot her still again as she continued to try to crawl to safety. Gaskin then tracked her around the house until he got her in view through the other doors that faced the hallway. "She was sitting there holding her head, looking at the blood." Gaskin then shot her again, and she fell over. While Mrs. Sturmfels lay there "groggily or dying," Gaskin subsequently entered the home through a window. Although Mr. Sturmfels was already dead, Gaskin "shot him again in the head at point-blank range." He then sought out Mrs. Sturmfels and "shot her again in the head at point-blank range."

The facts show that Mrs. Sturmfels knew her husband was being murdered, and that she must have contemplated her own death. She was shot at least twice before crawling down the hall where she ***921** watched blood pour from her wounds. She must have been in physical pain and mentally aware of her impending death as Gaskin first disabled her and then stalked her throughout the house. We find under the totality of facts presented here that the trial court did not abuse its discretion in concluding that this circumstance had been proven beyond a reasonable doubt. We note that even if this aggravating circumstance had not been found, we are persuaded that the trial court would have nevertheless imposed the death penalty, as it did for the death of Mr. Sturmfels in the absence of this aggravating circumstance.

[6] Gaskin also alleges that the trial court erred in its consideration of the mitigating evidence regarding his mental state. We find no error in the trial court's assessment. Dr. Rotstein, the psychiatrist, reported the following diagnosis:

> Schizotypal personality disorder appears to best fit this man's behavior. He is uncomfortable around others socially. He has preoccupations which almost or perhaps do reach the level of delusions and has perceptional experiences which sound very strongly like auditory hallucinations. He also describes episodes of Derealization or Depersonalization during the assault on the Rectors.

Dr. Rotstein concluded that at the time of the crimes, Gaskin was unable to conform his conduct to normal human behavior. However, the trial court concluded that the more accurate classification would be "extreme mental or emotional disturbance." We find that the trial court adequately considered all the mental mitigating evidence. The sentencing order clearly indicates a careful analysis of the psychiatric report in relation to the totality of the evidence:

> The murder[s were] committed while the defendant was under the influence of extreme mental or emotional disturbance. Although the court finds that the defendant's capacity was not impaired the court finds that the expert testimony combined with the other facts of the case support this finding. The court notes that it relied on the same expert testimony for the purpose of determining the factor involving substantially impaired capacity.

In rejecting that the defendant was unable to conform his conduct to the requirements of law, the judge explained in detail:

> The defendant was capable of appreciating the criminality of his conduct or of conforming his conduct to the requirements of law. Although there was expert testimony introduced regarding this factor this court has considered that testimony in making a finding of extreme mental disturbance as a mitigating circumstance. The evidence in the case shows the defendant, though crudely planned, carried out the murder[s] in a calculated fashion in order to obtain property from his victim's [sic]

> and then hid the property at a friend's house. The evidence shows the defendant knew at the time he was committing the murder that his conduct was criminal and had the capacity to conform his conduct to the requirements of law. His careful plan to avoid detection was designed so he would not be caught for the crime and suffer the criminal penalties. The facts do not support any implication that the defendant was engaged in a ninja type assassination.

Dr. Rotstein's report as a whole contains sufficient information to support the trial court's conclusion that Gaskin was able to appreciate the criminality of his conduct or to conform his conduct to normal human behavior despite being mentally and emotionally disturbed. For example, Gaskin told Dr. Rotstein:

> The devil had more of a hold than God did. I knew that I was wrong. I wasn't insane. There was no insanity involved.

In other parts of the report, Gaskin described his thoughts just prior to the murders:

> [T]he guy was on the Lazy Boy watching TV, the woman was on the sofa. I walked around a few more times. The devil was telling me to kill him. God was telling me to go back home. I was trying to decide what to do.
>
> ....
>
> ***922** I aimed at the guy. God said "No"; the devil said "yes." I pulled the trigger. There was no bullet in the chamber. I breathed a sigh of relief and also a sigh of disappointment. I walked around four or five times more. I couldn't make up my mind. I aimed the gun. I couldn't do it. I wasn't afraid. The shots wouldn't be heard.

We find no error in the judge's treatment of the mental mitigating evidence or in the weighing of the aggravating and mitigating circumstances.

Accordingly, we affirm the convictions, except for two of the four adjudications for murder, and the sentences, including two sentences of death. We remand for proceedings consistent with this opinion.

It is so ordered.

SHAW, C.J., and OVERTON, McDONALD, GRIMES, KOGAN and HARDING, JJ., concur.

All Citations

591 So.2d 917, 16 Fla. L. Weekly S762

APPENDIX D: The opinion of the Supreme Court of Florida following remand from this Court. *Gaskin v. State*, 615 So.2d 679 (Fla. 1993).

615 So.2d 679
Supreme Court of Florida.

Louis B. GASKIN, Appellant,
v.
STATE of Florida, Appellee.

No. 76326.
|
March 18, 1993.

Synopsis

Defendant was convicted in the Circuit Court, Flagler County, Kim C. Hammond, J., of first-degree murder and was sentenced to death. Defendant appealed. The Supreme Court, 591 So.2d 917, affirmed in part, vacated in part and remanded. On writ of certiorari, the United States Supreme Court, 112 S.Ct. 3022, vacated judgment and remanded. On remand, the Florida Supreme Court, Barkett, C.J., held that issue of unconstitutional vagueness as to jury instructions involving "especially heinous, atrocious, or cruel" aggravating factor was not preserved for review where defendant did not object to vagueness of instruction nor request special instruction for circumstance.

Sentences affirmed.

Attorneys and Law Firms

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Opinion

BARKETT, Chief Justice.

We have *Gaskin v. State,* 591 So.2d 917 (Fla.1991), *vacated,* 505 U.S. 1216, 112 S.Ct. 3022, 120 L.Ed.2d 894 (1992), on remand from the United States Supreme Court for further consideration in light of *Espinosa v. Florida,* 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992). [1]

1 We have jurisdiction pursuant to article V, section 3(b)(1), Florida Constitution.

The facts of this case are fully set forth in our previous opinion. The United States Supreme Court in *Espinosa* found insufficient our former jury instruction on the "especially heinous, atrocious, or cruel" aggravating factor. [2] We must determine what effect, if any, the reading of that same instruction had in Gaskin's case.

2 *See* § 921.141(5)(h), Fla.Stat. (1987).

[1] We find that although Gaskin argued at trial against the instruction for the "cold, calculated and premeditated" aggravating circumstance, [3] he did not object to the vagueness of the especially heinous, atrocious, or cruel aggravating circumstance instruction at trial, nor did he request a special instruction for this circumstance. Thus, the issue of

unconstitutional vagueness as to the jury instruction struck down in *Espinosa* has not been preserved for review. *See, e.g., Ragsdale v. State,* 609 So.2d 10 (Fla.1992).

3 *See* § 921.141(5)(i), Fla.Stat. (1987).

[2] In addition, were we to address the issue, the reading of the insufficient heinous, atrocious, or cruel aggravating circumstance instruction as it relates to the sentence for the murder of Georgette Sturmfels would be harmless error beyond a reasonable doubt, because the reading of this vague instruction could not have affected the jury's recommendation of death in this case. Therefore, for the reasons stated here and in our earlier decision, we again affirm the two death sentences.

It is so ordered.

OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

All Citations

615 So.2d 679, 18 Fla. L. Weekly S161

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APPENDIX E: The opinion of the Supreme Court of Florida following appeal of the denial of Petitioner's first successive postconviction motion. *Gaskin v. State*, 218 So.3d 399 (Fla. 2017), *reh'g denied*, No. SC15-1884, 2017 WL 2210388 (Fla. May 17, 2017); *cert denied Gaskin v. Florida*, 138 S. Ct. 471 (2017).

218 So.3d 399
Supreme Court of Florida.

Louis B. GASKIN, Appellant,
v.
STATE of Florida, Appellee.

No. SC15–1884
|
[January 19, 2017]

Synopsis
Background: Defendant, whose two convictions for first-degree murder and two sentences of death were affirmed on appeal, 591 So.2d 917, filed a postconviction motion to vacate judgment of conviction. The Circuit Court, Volusia County, Joseph David Walsh, J., denied the motion and defendant appealed.

Holdings: The Supreme Court held that:

[1] defendant's judgment became final when United States Supreme Court denied certiorari review, not when the trial court issued a corrected judgment 21 years after the initial judgment;

[2] defendant's postconviction relief claim that sought to vacate his murder conviction based on alleged improper doubling of the aggravating factors was procedurally barred; and

[3] the holding in *Hurst v. Florida*, 136 S.Ct. 616, did not apply retroactively to defendant's two sentences of death for two counts of first-degree murder.

Affirmed.

An Appeal from the Circuit Court in and for Volusia County, Joseph David Walsh, Judge—Case No. 641995CF034327XXXAES

Attorneys and Law Firms

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel—Middle Region, James Lawrence Driscoll, Jr., David Dixon Hendry, and Gregory W. Brown, Assistant Capital Collateral Regional Counsel—Middle Region, Tampa, Florida, for Appellant

***400** Pamela Jo Bondi, Attorney General, Tallahassee, Florida; and Scott Andrew Browne, Senior Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

This case is before the Court on appeal from an order denying appellant Louis B. Gaskin's motion to vacate a judgment for two convictions of first-degree murder and two sentences of death under Florida Rule of Criminal Procedure 3.851.

Because the order concerns postconviction relief from two capital convictions for which two sentences of death were imposed, this Court has jurisdiction of the appeal under article V, section 3(b)(1), Florida Constitution. For the following reasons, we affirm Gaskin's convictions and sentences.

The facts of this case were presented in this Court's opinion on direct appeal. Gaskin v. State, 591 So.2d 917 (Fla. 1991). In 1989, Gaskin was convicted of two counts of first-degree murder (premeditated and felony murder) for the death of Robert Sturmfels, two counts of first-degree murder (premeditated and felony murder) in the death of Georgette Sturmfels, one count of armed robbery of the Sturmfels' home, one count of burglary of the Sturmfels' home, one count of attempted first-degree murder of Joseph Rector, one count of armed robbery of Joseph and Mary Rector, and one count of burglary of the Rectors' home. Id. at 918. In 1990, after the penalty phase, the jury recommended two death sentences for both murders by a vote of eight to four. Id. at 919. The trial court sentenced Gaskin to death. Id. In 1991, this Court affirmed Gaskin's premeditated murder convictions and two death sentences, reversed the two felony murder convictions that were duplicative of the premeditated murder convictions, and remanded to the trial court for proceedings consistent with its decision. Id. at 922. In 1993, Gaskin's sentences became final when the United States Supreme Court denied certiorari review. Gaskin v. State, 510 U.S. 925, 114 S.Ct. 328, 126 L.Ed.2d 274 (1993). In 2002, this Court affirmed the lower court's denial of Gaskin's initial motion for postconviction relief. Gaskin v. State, 822 So.2d 1243 (Fla. 2002). In 2014, pursuant to this Court's 1991 directive, the lower court vacated one felony murder conviction for each victim. In 2015, Gaskin filed his first successive motion to vacate the judgment of conviction, challenging the premeditated murder convictions and death sentences, and alleging that the jury's use of both premeditated murder and felony murder as aggravating circumstances amounted to improper doubling of aggravators. The postconviction court summarily denied Gaskin's claims. Gaskin appealed to this Court, arguing that the postconviction court erred in summarily denying his claim that his convictions should be vacated because the jury considered two vacated convictions to recommend the death sentences. Gaskin also argues that he is entitled to relief in light of the United States Supreme Court's decision Hurst v. Florida, — U.S. ——, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). For the reasons below, we affirm the denial of postconviction relief.

Standard of Review

[1] **[2]** A successive rule 3.851 motion may be denied without an evidentiary hearing if the records of the case conclusively show that the movant is not entitled to relief. Reed v. State, 116 So.3d 260, 264 (2013). This Court reviews the circuit court's decision to summarily deny a successive rule 3.851 motion de novo, accepting the movant's factual allegations as true to the extent that they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is not entitled to relief. Id.

***401 Merits**

[3] Gaskin's claim of improper doubling is untimely and procedurally barred because the issue could have and should have been raised on direct appeal.

In general, a postconviction movant must file for relief "within 1 year after [the movant's] judgment and sentence become final." Fla. R. Crim. P. 3.851(d)(1). A judgment and sentence become final "on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed." Fla. R. Crim. P. 3.851(d)(1)(B). Gaskin argues that his judgment became final when the circuit court issued the corrected judgment in 2014. This is contrary to rule 3.851: Gaskin's sentence became final in 1993, when the United States Supreme Court denied certiorari review. Gaskin, 510 U.S. at 936, 114 S.Ct. 328; see State v. Johnson, 122 So.3d 856 (Fla. 2013) (Johnson's sentence became final in 2000, when the United States Supreme Court denied certiorari review).

[4] Additionally, Gaskin's claim is procedurally barred because Gaskin had the opportunity to challenge not only his duplicative convictions on direct appeal but to challenge his sentences on the basis that the jury erroneously considered the doubled convictions in recommending two death sentences. See Dennis v. State, 109 So.3d 680, 698 (Fla. 2012) (holding that claims were procedurally barred because the movant could have raised them on direct appeal).

[5] Finally, Gaskin's argues that he is entitled to relief in light of Hurst v. Florida. Because Gaskin's sentence became final in 1993, Gaskin is not entitled to relief under Hurst v. Florida. See Asay v. State, 210 So.3d 1, 29–30, 2016 WL 7406538 at *13 (Fla. 2016) (holding that Hurst is not retroactive to cases that became final before the United States Supreme Court decided Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002)). Accordingly, we affirm the circuit court's order summarily denying Gaskin's successive postconviction motion.

It is so ordered.

LABARGA, C.J., and QUINCE, and POLSTON, JJ., concur.

CANADY, J., concurs in result.

PARIENTE, J., concurs in part and dissents in part with an opinion.

PERRY, Senior Justice, concurs in part and dissents in part with an opinion.

LEWIS, J., dissents.

PARIENTE, J., concurring in part and dissenting in part.
While I agree with the majority's conclusion that Gaskin's claim of improper doubling is untimely and procedurally barred, I write separately to express my disagreement with denying Gaskin relief under Hurst v. Florida [1] and Hurst. [2] As I stated in my concurring in part and dissenting in part opinion in Asay, [3] fundamental fairness concerns emanating from the constitutional rights at stake require us to hold Hurst fully retroactive to all death sentences imposed under Florida's prior, unconstitutional capital sentencing scheme. Asay, 210 So.3d at 32, 2016 WL 7406538 (Fla. Dec. 22, 2016) (Pariente, J., concurring in part and dissenting in part); see Hurst v. Florida, 136 S.Ct. at 622 (holding Florida's capital ***402** sentencing scheme unconstitutional). Thus, I would hold that Hurst applies retroactively to Gaskin. Further determining that the Hurst error in Gaskin's sentence was not harmless beyond a reasonable doubt, I would grant Gaskin a new penalty phase.

1 Hurst v. Florida (Hurst v. Florida), 136 S.Ct. 616 (2016).

2 Hurst v. State (Hurst), 202 So.3d 40 (Fla. 2016).

3 Asay, 210 So.3d at 26, 2016 WL 7406538 (Fla. Dec. 22, 2016).

Short of holding Hurst fully retroactive, I would at least apply Hurst to Gaskin because he, through his attorneys, challenged the constitutionality of Florida's capital sentencing statute at trial in 1990 and, again, on direct appeal in 1991. This Court summarily rejected Gaskin's claim on direct appeal, stating: "We also reject without discussion Gaskin's multiple assertions regarding the constitutionality of the capital-sentencing statute as each of his arguments has previously been decided adversely to his position." Gaskin v. State, 591 So.2d 917, 920 (Fla. 1991). Although our opinion did not detail Gaskin's constitutional challenges, the record on appeal reveals that Gaskin argued that "section 921.141 ... was unconstitutional on its face" for the reasons espoused by the United States Supreme Court in Ring [4] and Hurst v. Florida and then further explained by this Court in Hurst:

> [B]efore a sentence of death may be considered by the trial court in Florida, the jury must find the existence of the aggravating factors proven beyond a reasonable doubt, that the aggravating factors are sufficient to impose death, and that the aggravating factors outweigh the mitigating circumstances. These same requirements existed in Florida law when Hurst was sentenced in 2012—although they were consigned to the trial judge to make.
>
> We also conclude that, just as elements of a crime must be found unanimously by a Florida jury, all these findings necessary for the jury to essentially convict a defendant of capital murder—thus allowing imposition of the death penalty—are also elements that must be found unanimously by the jury. Thus, we hold that in addition to unanimously finding the existence of any aggravating factor, the jury must also unanimously find that the aggravating factors are sufficient for the imposition of death and unanimously find that the aggravating factors outweigh the mitigation before a sentence of death may be considered by the judge.

Hurst, 202 So.3d at 53–54 (footnotes omitted).

4 Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).

Amid a myriad of arguments as to how Florida's capital sentencing scheme violated the fundamental rights of defendants facing the death penalty in Florida, Gaskin specifically argued that the statute "does not require a sentencing recommendation by a unanimous jury or a substantial majority of the jury and thus results in the arbitrary and unreliable application of the death sentence and denies the right to a jury and to due process of law." [5] Among Gaskin's several motions, filed through counsel, [6] disputing the validity of Florida's ***403** capital sentencing scheme was a "Motion for Use of Special Verdict Form for the Unanimous Jury Determination of Statutory Aggravating Circumstances," citing among other constitutional bases the Sixth Amendment to the United States Constitution and article I, section 22, of the Florida Constitution. State v. Gaskin, No. 90–01/07/17 (Fla. May 10, 1990). Gaskin also filed a separate motion to declare unconstitutional section 921.141, Florida Statutes, broadly arguing many of the deficiencies in the statute that have now been recognized as constitutionally impermissible, such as jury overrides and the bare majority jury recommendation. [7] Most closely resembling Hurst v. Florida and Hurst, Gaskin argued that section 921.141 is facially unconstitutional because the "jury recommendation need not be unanimous," nothing "require[s] the court to instruct the jury that to return a recommendation of death, the jury must be convinced beyond every reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances," "the jury is not required to list the specific aggravating circumstances they have found beyond a reasonable doubt when they recommend the death penalty," and "it permits the trial judge to consider aggravating circumstances in imposing the death sentence that the advisory jury may not have considered or that the advisory jury may have rejected." Id. at 7–9. [8] Even without a finding a full retroactivity, under Justice Lewis's concurring in result opinion in Asay, Hurst would apply retroactively to Gaskin under James v. State, 615 So.2d 668 (Fla. 1993), because Gaskin asserted, presented, and preserved a challenge to the lack of jury factfinding in Florida's capital sentencing procedure. Asay, 210 So.3d at 30, 2016 WL 7406538, at *20 (Lewis, J., concurring in result).

5 Gaskin v. State, No. SC76–326, Initial Br. of Appellant (Fla. Mar. 5, 1991), at 70; accord Gaskin v. State, Nos. 90–01 ; 90–07; 90–17, Motion to Preclude Imposition of the Death Penalty (Flagler Cty. Cir. Ct. Fla. June 5, 1990), at 7 ("Section 921.141 ... is unconstitutional on its face because the jury recommendation need not be unanimous, thereby depriving the Defendant to the rights to Due Process and to a unanimous jury verdict, in violation of Article I, Section 9, 16 and 22 of the Florida Constitution and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.").

6 The constitutional arguments made on behalf of Gaskin were a product of the advocacy of his lawyer Christopher S. Quarles, an assistant public defender and a zealous advocate for his death penalty clients for decades.

7 Gaskin v. State, Motion to Preclude Imposition of the Death Penalty, Nos. 90–01 ; 90–07; 90–17 (Flagler Cty. Cir. Ct. Fla. June 5, 1990), at 4 ("Section 921.141 ... is unconstitutional on its face because a jury recommendation of life in prison need not be followed by the trial court judge."); id. at 5 ("Section 921.141 ... is unconstitutional on its face because it permits the trial

judge to overrule a jury life recommendation, contrary to the clear expression of the conscience of the community." (citing McCaskill v. State, 344 So.2d 1276, 1280 (Fla. 1977)).

8 See Gaskin v. State, Motion to Prohibit Any Reference to the Advisory Role of the Jury, Nos. 90–01 ; 90–07; 90–17 (Flagler Cty. Cir. Ct. Fla. June 5, 1990), at 2 ("Reference to the advisory role of the jury would deny the Defendant due process of law and a fair trial ...."). See generally Hurst v. Florida, — U.S. ——, 136 S.Ct. 616, 193 L.Ed.2d 504; Ring, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556.

Because I would apply Hurst to Gaskin's case, I must now determine whether the Hurst error in Gaskin's penalty phase was harmless beyond a reasonable doubt. On remand from the United States Supreme Court, this Court determined that Hurst error is capable of harmless error review. Hurst, 202 So.3d at 67. In Hurst, we established the test for reviewing these errors for harmlessness:

> Where the error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence. See, e.g., Zack v. State, 753 So.2d 9, 20 (Fla. 2000). Although the harmless error test applies to both constitutional errors and errors not based on constitutional grounds, "the harmless error test is to be rigorously applied," [State v.] DiGuilio, 491 So.2d [1129,] 1137 [Fla. 1986], and the State bears an extremely heavy burden in cases involving constitutional error. Therefore, in the context of a Hurst v. Florida error, the burden is on the ***404** State, as the beneficiary of the error, to prove beyond a reasonable doubt that the jury's failure to unanimously find all the facts necessary for imposition of the death penalty did not contribute to Hurst's death sentence in this case. We reiterate:
>
> > The test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence. The focus is on the effect of the error on the trier-of-fact.
>
> DiGuilio, 491 So.2d at 1139. "The question is whether there is a reasonable possibility that the error affected the [sentence]." Id.

202 So.3d at 68 (last alteration in original). As applied to the right to a jury trial with regard to the facts necessary to impose the death penalty, it must be clear beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravating factors that outweighed the mitigating circumstances.

Gaskin's sentences became final in 1993. Majority op. at 400. The penalty phase jury voted eight to four to recommend a sentence of death for both murders. Majority op. at 400. So not only are we unable to determine beyond a reasonable doubt that the jury unanimously made the requisite findings to impose death as required by Hurst, but most significantly in Gaskin's case, the jury may have relied on invalid aggravating factors to reach its mere eight to four recommendation for death. See majority op. at 400. As the majority explained, this Court reversed and vacated Gaskin's sentences of felony murder, which the sentencing jury likely considered in its weighing process. Majority op. at 400. Thus, for the reasons stated above and under the test set forth by this Court in Hurst for determining whether Hurst errors are harmless beyond a reasonable doubt, I would conclude that any error in Gaskin's nonunanimous sentencing recommendation was not harmless beyond a reasonable doubt and Gaskin should, therefore, receive a new penalty phase under Hurst.

PERRY, Senior Justice, concurring in part and dissenting in part.

I concur in the majority's conclusion that Gaskin's claim of improper doubling is untimely and procedurally barred. See majority op. at 401. However, I respectfully dissent from the majority's decision not to apply Hurst v. Florida, — U.S. ——, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), retroactively.

I dissent because Hurst v. Florida does apply retroactively to Gaskin's case. In his present appeal, Gaskin once again challenges the constitutionality of Florida's death penalty statute. The majority concluded that Gaskin was not eligible for Hurst v. Florida relief because Gaskin's sentences became final in 1993, before the United States Supreme Court decided Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). See majority op. at 401.

For the reasons I dissented in part in Asay, I cannot agree with the majority's decision to limit the retroactive effect of Hurst v. Florida to those cases that were not final before Ring. See Asay v. State, 210 So.3d 1, 37, 2016 WL 7406538 at *26 (Fla. 2016) (Perry, J., dissenting). I would find that Hurst v. Florida applies retroactively regardless of whether a sentence ***405** became final before or after the Ring decision.

All Citations

218 So.3d 399, 42 Fla. L. Weekly S16

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APPENDIX F: The order of the Circuit Court of the Seventh Judicial Circuit denying Petitioner's First Successive Motion to Vacate Judgment of Conviction and Sentence. (Unreported).

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

-vs-

LOUIS BERNARD GASKIN, a/k/a

LOUIS BERNARD GASKINS,
Defendant.
_____/

CASE NO.: 1990 CF 07

DIVISION 50: Judge J. David Walsh

ORDER DENYING FIRST SUCCEESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE

This cause is before the court upon Defendant Gaskin's above styled motion. A case management conference was conducted on June 19, 2015. Both parties have submitted written supplemental argument on the sole issue raised. This court finds as follows:

Following a jury trial Mr. Gaskin was convicted of the first degree premeditated murders and first degree felony murders of Robert and Georgette Sturmfels, attempted murder of Joseph Rector, two counts of armed robbery with a firearm and two counts of burglary with a firearm. Mr. Gaskin was sentenced to four death penalties in the capital cases although there were only two murders. On August 12, 2014 the trial court entered a corrected judgment as directed by the Florida Supreme Court in *Gaskin v. State*, 591 So.2d 917 (Fla. 1991). The Florida Supreme Court had affirmed Gaskin's convictions and sentences, but ordered the trial court to vacate two of the adjudications for first-degree murder: one for each victim, leaving in place two convictions for first degree murder and two death sentences. *See Gaskin* at 920. The case was remanded to the trial court to effectuate this ministerial task.

Defendant Gaskin now alleges the corrected judgment and sentence vacating the death penalties imposed in Counts II and IV of the indictment, and the adjudication of guilt in said

counts, establishes that the death sentences given on counts I and III of the indictment were the result of unconstitutional doubling of the aggravating circumstance of prior violent felonies.

While ordering the vacation of duplicative convictions, the Florida Supreme Court found the trial court properly considered aggravating and mitigating circumstances. *Id.* The finding of aggravation that Gaskin had previously been convicted of another capital offense or of a felony involving the use or threat of violence was supported in Robert Sturmfels' death with the contemporaneous convictions for the offenses involving the Rectors[1] and Georgette Sturmfels; in Georgette Sturmfels' death, with the contemporaneous convictions involving the Rectors and Robert Sturmfels. Mr. Gaskin clearly qualified for the prior felony murder conviction aggravators for the contemporaneous murders of the Sturmfels, and the crimes committed against the Rectors. "[T]he contemporaneous conviction of a violent felony may qualify as an aggravating circumstance, so long as the two crimes involved multiple victims or separate episodes." *Frances v. State,* 970 So. 2d 806, 816 (Fla. 2007) citing *Pardo v. State,* 563 So.2d 77, 80 (Fla.1990); *see also Winkles v. State,* 894 So.2d 842, 846 (Fla.2005) (finding that each murder in the indictment to which defendant pled guilty constituted a prior violent felony conviction as to the other murder conviction); *Doorbal v. State,* 837 So.2d 940, 963 (Fla.2003) (noting that one of the aggravating factors found was prior violent felony based on the contemporaneous murders of the two victims); *Francis v. State,* 808 So.2d 110, 136 (Fla.2001) (finding that trial court correctly found that murder conviction as to one victim aggravated the murder conviction as to other victim, and vice versa). There was no improper doubling.

[1] Following the murders of the Sturmfels, Mr. Gaskin proceeded to the home of Joseph and Mary Rector where he shot Mr. Rector from outside the home; the Rectors were able to get in their car and head to the hospital while still being shot at by Mr. Gaskin. He then burglarized their home. Gaskin was convicted of attempted murder of Mr. Rector, armed robbery of the Rectors and burglary of the Rector's home.

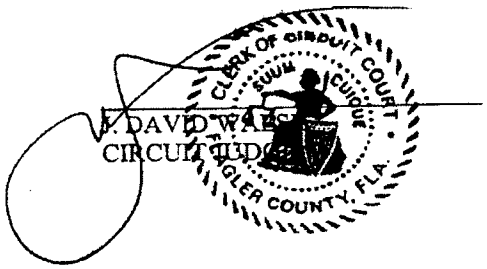
The ministerial act of correction did not require the Defendant's presence. The order of the Florida Supreme Court specified that one of each of the duplicative convictions and sentences be vacated. The trial court had no jurisdiction to vary from that mandate; no new information was considered, nor did the court have discretion in performing the correction. See *Jordan v. State*, 143 So. 2d 335, 339 (Fla. 2014). Mr. Gaskin's sentence has not been altered; he received two death sentences for two murders in this case. Assuming any error can be discerned from the procedure employed following the Supreme Court's mandate it would be harmless error considering the totality of the circumstances. It is, thereupon

ORDERED and ADJUDGED Defendant Gaskin's First Successive Motion to Vacate is Denied.[2]

The Defendant has the right to appeal within 30 days of the date of rendition of the order.

The Clerk of Court is directed to provide a copy of the order to all parties, including the Defendant, with a certificate of service.

DONE and ORDERED in Chambers, Kim C. Hammond Justice Center, Bunnell, Florida this 6 day of August, 2015.



J. DAVID WA
CIRCUIT JUD

[2] In Mr. Gaskin's supplemental written argument the case of *Hurst v. State*, 147 So. 3d 435 (Fla. 2014) is brought up for the first time. That case will be heard before the Supreme Court next term and has no immediate bearing on this case.

CERTIFICATE OF SERVICE

I certify that on 8/6/15 a copy hereof has been furnished to:

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DEPUTY CLERK

CLERK OF CIRCUIT COURT CUIQUE FLAGLER COUNTY, FLA.

APPENDIX G: Corrected Judgment and Sentence Vacating the Death Penalty Imposed In Counts II and IV of the Indictment and the Adjudication of Guilt in Said Counts. (Unreported).

Filed in the Office of the Clerk of the Circuit Court - Flagler County, Florida - 08/18/2014 01:49 PM

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

-vs-

CASE NO.: 1990 CF 01

LOUIS BERNARD GASKIN, a/k/a

DIVISION 50: Judge J. David Walsh

LOUIS BERNARD GASKINS,
Defendant.
_____/

CORRECTED JUDGMENT AND SENTENCE
VACATING THE DEATH PENALTY IMPOSED IN COUNTS II AND IV OF THE
INDICTMENT AND THE ADJUDICATION OF GUILT IN SAID COUNTS

This cause is before this Court for a Corrected Judgment and Sentence in compliance with a Mandate issued by the Florida Supreme Court. *Gaskin v. State*, 591 So.2d 917 (Fla. 1991). Having reviewed the record and being otherwise fully advised in the premises this Court finds as follows:

In 1991 Defendant Gaskin was convicted of four counts of first-degree murder (two counts of premeditated and two counts of felony murder) involving two victims, one count of attempted first degree murder, two counts of armed robbery and two counts of burglary. As for the murder convictions, the jury recommended a sentence of death by a vote of eight to four. The trial court followed the jury's recommendation, finding four aggravating circumstances, including that both murders were committed in a cold, calculated and premeditated manner, and two mitigating circumstances. The Florida Supreme Court affirmed Gaskin's convictions and sentence but vacated two of the adjudications for first-degree murder, one for each victim, leaving in place two convictions for first degree murder. *See Gaskin,* 591 So.2d at 920. At that

time the Supreme Court also remanded the case for proceedings consistent with that holding. No corrected judgment and sentence was ever entered by this court.[1]

Clearly only one homicide conviction and sentence may be imposed for a single death. *Gaskin* citing *Lamb v. State*, 532 So.2d 1051 (Fla.1988); *Houser v. State*, 474 So.2d 1193 (Fla.1985). Therefore, it is

ORDERED and ADJUDGED the felony murder adjudications and the resultant deaths sentences set forth in Counts II and IV of the Indictment are hereby Vacated. The remainder of the June 19th, 1990 Judgment and Sentence remains in full force and effect. It is further,

ORDERED and ADJUDGED the August 13, 1990 Amended Judgment and Sentence is Vacated. It is further,

ORDERED and ADJUDGED that the Clerk of Court file this order in the official records and provide certified copies to any required agencies for use in compliance with the requirements of the law.

DONE and ORDERED in Chambers, Kim C. Hammond Justice Center, Bunnell, Florida this 12th day of August, 2014, **nunc pro tunc** 19th day of June, 1990.

J. DAVID WALSH
CIRCUIT COURT JUDGE

Copies to:
Office of the State Attorney

Department of Correction
ATTN: Bureau of Admissions and Release
501 S. Calhoun Street
Tallahassee, Florida 32399-2500

[1] An amended judgment and sentence was entered on August 13, 1990, prior to the Supreme Court's ruling. Inexplicably, Count III, premeditated murder of the second victim, was changed to burglary of dwelling with a firearm. That offense had already been addressed by the adjudication of guilt and sentence in Count VI. That amendment will also be vacated herein.

Michelle Witworth, Capital Punishment Review
Florida Commission on Offender Review
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