

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM 2017**

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GARY RICHARD WHITTON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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*On Petition for a Writ of Certiorari to the  
Supreme Court of Florida*

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**APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI**

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***THIS IS A CAPITAL CASE***

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To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Gary Richard Whitton, a death-sentenced Florida prisoner, respectfully moves for a 45-day extension of time for undersigned counsel to file a petition for a writ of certiorari seeking review of the Florida Supreme Court's January 31, 2018, decision in his case. The Florida Supreme Court's January 31 decision, and order denying rehearing on March 13, 2018, are attached to this application. Petitioner has calculated the certiorari filing date from the rehearing denial. This

application is filed more than 10 days ahead of the certiorari filing deadline. This Court has jurisdiction to grant a writ of certiorari under 28 U.S.C. § 1257(a).

Undersigned counsel of record for Petitioner, Mark E. Olive, requests this extension based on out-of-state commitments and obligations to other death-sentenced clients. Co-counsel, the Capital Habeas Unit (“CHU”) of the Federal Public Defender for the Northern District of Florida, also has obligations to other clients on Florida’s death row, including direct representation of numerous clients seeking certiorari review of their cases under *Hurst v. Florida*, 136 S. Ct. 616 (2017). A 45-day extension of time is reasonable in Petitioner’s case to allow Mr. Olive and the CHU to research, coordinate, and present Petitioner Whitton’s certiorari arguments in a professional manner. Counsel are not seeking 60 days, but 45—a shorter time than the rule allows.

The Florida Attorney General’s Office informed undersigned counsel that the State did not object to a 45-day extension in this case.

Petitioner respectfully requests that the Court grant this request.

Respectfully submitted,

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# Supreme Court of Florida

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No. SC17-1118

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**GARY RICHARD WHITTON,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[January 31, 2018]

PER CURIAM.

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

Whitton'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). This Court stayed Whitton's appeal pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017).

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

After reviewing Whitton's response to the order to show cause, as well as the State's arguments in reply, we conclude that Whitton is not entitled to relief. Whitton was sentenced to death following a jury's unanimous recommendation for death. Whitton v. State, 649 So. 2d 861, 864 (Fla. 1994). Whitton's sentence of death became final in 1995. Whitton v. Florida, 516 U.S. 832 (1995). Thus, Hurst does not apply retroactively to Whitton's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Whitton's motion.

The Court having carefully considered all arguments raised by Whitton, 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 Walton County,  
Michael G. Allen, Judge - Case No. 661990CF000429CFAXMX

Mark E. Olive of Law Office of Mark Olive, P.A., Tallahassee, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Lisa A. Hopkins, Assistant Attorney  
General, Tallahassee, Florida,

for Appellee

# Supreme Court of Florida

TUESDAY, MARCH 13, 2018

CASE NO.: SC17-1118  
Lower Tribunal No(s):  
661990CF000429CFAXMX

GARY RICHARD WHITTON vs. STATE OF FLORIDA

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Appellant(s)

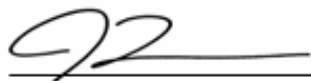
Appellee(s)

Appellant's Motion for Rehearing and Clarification is hereby denied.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON,  
and LAWSON, JJ., concur.

A True Copy

Test:



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John A. Tomasino  
Clerk, Supreme Court



cd

Served:

MARK EVAN OLIVE  
LISA HOPKINS  
BILLY H. NOLAS  
JOHN A. MOLCHAN  
HON. ALEX ALFORD, CLERK  
HON. MICHAEL GORDON ALLEN, JUDGE