

DOCKET NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

MILFORD WADE BYRD,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

APPLICATION FOR SIXTY (60) DAY EXTENSION OF TIME IN WHICH TO
FILE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

COMES NOW, the Petitioner, **MILFORD WADE BYRD**, by and through undersigned counsel, and pursuant to Supreme Court Rule 13.5, respectfully requests an extension of time of sixty (60) days within which to file his Petition for Writ of Certiorari to the Florida Supreme Court. In support of his request, Petitioner, through counsel, states as follows:

1. Petitioner is a death-sentenced inmate in the custody of the State of Florida. This case involves a capital appeal to the Florida Supreme Court from the denial of post conviction relief.
2. This Court's jurisdiction rests on 28 U.S.C. §1257.

3. Petitioner was convicted of murder and sentenced to death in the circuit court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.

4. On February 28, 2018, Petitioner's appeal was denied by the Florida Supreme Court (Attachment A). Petitioner's time to petition for certiorari in this Court expires May 29, 2018.

5. Petitioner shows the following good cause in support of this request.

6. Petitioner's lead counsel, who is court-appointed in this matter, has had a burdensome caseload since the final disposition of Petitioner's case in the Florida Supreme Court. In addition, counsel's 94 year-old father was hospitalized in Illinois on April 6, 2018. As a result, counsel had to travel there from Florida for the resulting family emergency. After his father was discharged and moved to a rehab facility on April 18, 2018, counsel was able to return his Fort Lauderdale home late on April 21, 2018. During the past two months, counsel also has had briefing due in three capital appeals pending in the Florida Supreme Court, an evidentiary hearing in state circuit court in a capital case, and a petition for a writ of certiorari due in this Court on May 18, 2018. The family emergency and counsel's already burdensome case load left Petitioner's counsel unable to prepare a proper petition for a writ of certiorari. As a result, counsel has to ask for a sixty (60) day extension to be able to prepare a proper petition for a writ of certiorari in Petitioner's case.

WHEREFORE, Petitioner, through his undersigned counsel, respectfully requests an extension of time of sixty (60) days within which to file the Petition for Writ of Certiorari to the Florida Supreme Court in the above-styled case.

I HEREBY CERTIFY that a true copy of the foregoing application has been furnished by electronic service to all counsel of record on May 23, 2018.

/s/ Martin J. McClain
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Attachment A

237 So.3d 922

Supreme Court of Florida.

Milford Wade BYRD, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-1733

|

[February 28, 2018]

Synopsis

Background: Petitioner moved for postconviction relief. The Circuit Court, Hillsborough County, No. 291981CF010517000AHC, Michelle Sisco, J., denied the petition. Petitioner appealed.

[Holding:] The Supreme Court held that decision of United States Supreme Court in *Hurst v. Florida*, 136 S.Ct. 616, holding that Sixth Amendment required jury, not judge, to find each fact necessary to impose death sentence, did not apply retroactively to petitioner's death sentence.

Pariente, J., concurred in result with opinion.

Lewis and Canady, JJ., concurred in result.

West Headnotes (1)

[I] Courts

➥ In general; retroactive or prospective operation

Criminal Law

➥ Change in the law

Decision of the United States Supreme Court in *Hurst v. Florida*, 136 S.Ct. 616, which held that the Sixth Amendment required a jury, not a judge, to find each fact necessary to impose a death sentence, did not apply retroactively to postconviction relief petitioner's death sentence, where petitioner was sentenced to death following a jury's recommendation for death and sentence became final 30 years

before *Hurst v. Florida* was decided. U.S. Const. Amend. 6.

Cases that cite this headnote

An Appeal from the Circuit Court in and for Hillsborough County, Michelle Sisco, Judge—Case No. 291981CF010517000AHC

Attorneys and Law Firms

Neal Dupree, Capital Collateral Regional Counsel, Bryan E. Martinez, Staff Attorney, and Martin J. McClain, Special Assistant Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida, for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Marilyn Muir Beccue, Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

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

Byrd's motion sought relief pursuant to the United States Supreme Court's decision in ***923** *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), Byrd responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Byrd's response to the order to show cause, as well as the State's arguments in reply, we conclude that Byrd is not entitled to relief. Byrd was sentenced to death following a jury's recommendation for death. *Byrd v. State*, 481 So.2d 468, 471 (Fla. 1985).¹ Byrd's sentence of death became final in 1986. *Byrd v. Florida*, 476 U.S. 1153, 106 S.Ct. 2261, 90 L.Ed.2d 705 (1986). Thus, *Hurst* does not apply retroactively to

Byrd's sentence of death. *See Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Byrd's motion.

¹ The jury's vote to recommend death is unknown. This Court's opinion on direct appeal merely states that "[t]he jury returned an advisory recommendation of the death penalty." *Byrd*, 481 So.2d at 471.

The Court having carefully considered all arguments raised by Byrd, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

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

PARIENTE, J., concurs in result with an opinion.

LEWIS and CANADY, JJ., concur in result.

QUINCE, J. recused.

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 922, 43 Fla. L. Weekly S115