

237 So.3d 914

Supreme Court of Florida.

Anthony LAMARCA, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-1179

|

[January 30, 2018]

Synopsis

Background: Defendant who had been sentenced to death filed a motion for collateral relief. The Circuit Court, Pinellas County, No. 52199502070XXXXNO, [Nancy Moate Ley](#), J., denied the motion. Defendant appealed.

[Holding:] The Supreme Court held that [Hurst v. State](#), 202 So. 3d 40, which required a jury to unanimously find that aggravating factors were sufficient to impose death, did not apply retroactively to defendant's death sentence.

Affirmed.

[Pariente](#), J., filed an opinion concurring in result.

[Lewis](#) and [Canady](#), JJ., concurred in result.

West Headnotes (1)

[1] Courts

 In general;retroactive or prospective operation

Florida Supreme Court decision in [Hurst v. State](#), 202 So. 3d 40, in which Court held that a jury to was required to unanimously find that aggravating factors were sufficient to impose death, did not apply retroactively to defendant's death sentence; defendant was sentenced to death following a jury's recommendation for death by a vote of eleven to one, and his sentence became final approximately 15 years before [Hurst](#) was issued.

Cases that cite this headnote

An Appeal from the Circuit Court in and for Pinellas County, [Nancy Moate Ley](#), Judge—Case No. 52199502070XXXXNO

Attorneys and Law Firms

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[Pamela Jo Bondi](#), Attorney General, Tallahassee, Florida, and [Scott A. Browne](#), Senior Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

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

Lamarca'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). This Court stayed Lamarca's appeal pending the disposition of [Hitchcock v. State](#), 226 So.3d 216 (Fla. 2017), cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017). After this Court decided [Hitchcock](#), Lamarca responded to this Court's order to show cause arguing why [Hitchcock](#) should not be dispositive in this case.

***915** After reviewing Lamarca's response to the order to show cause, as well as the State's arguments in reply, we conclude that Lamarca is not entitled to relief. Lamarca was sentenced to death following a jury's recommendation for death by a vote of eleven to one. [LaMarca v. State](#), 785 So.2d 1209, 1211 (Fla. 2001). Lamarca's sentence of death became final in 2001. [LaMarca v. Florida](#), 534 U.S. 925,

122 S.Ct. 281, 151 L.Ed.2d 207 (2001). Thus, [Hurst](#) does not apply retroactively to Lamarca's sentence of death. See [Hitchcock](#), 226 So.3d at 217. Accordingly, we affirm the denial of Lamarca's motion.

The Court having carefully considered all arguments raised by Lamarca, 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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