

CAPITAL CASE

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DUANE EUGENE OWEN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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

APPENDIX

James L. Driscoll Jr.
Florida Bar No. 0078840
Law Office of the Capital Collateral
Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
Phone No. (813) 558-1600 ext. 608
Fax No. (813) 558-1601
Attorney of Record for Petitioner

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Appendix A: The unreported opinion of the Circuit Court in and for Palm Beach County denying Successive Motion for Postconviction under Florida Rule of Criminal Procedure 3.851 issued January 5, 2018.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA,

Case No. 1984CF004000AMB
Division: W

vs.

DUANE EUGENE OWEN
Defendant.

/

**ORDER DENYING DEFENDANT OWEN'S SUCCESSIVE
MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE**

This matter came before the Court on Defendant Duane Eugene Owen's Successive Motion to Vacate Judgment of Conviction and Sentence (DE #342) filed pursuant to Fla. R. Crim. P. 3.850 and Fla. R. Crim. P. 3.851. Hearings were conducted on the Defendant's Motion on July 18, 2017 and December 11, 2017. The Court has reviewed the Defendant's Motion, Defendant's Briefing in Support of Vacating Death Sentence (DE #223), State's Response to Defendant's Successive Motion to Vacate Convictions and Sentence Pursuant to Rule 3.851 (DE #199) and State's Supplemental Response to Successive Motion to Vacate Sentence (DE #224). The Court has also heard the argument of counsel, reviewed the file and record of proceedings and has reviewed the applicable case law. Upon consideration, the Court makes the findings that follow.

This cases arises out of the brutal murder of [REDACTED] On May 28, 1984, the Defendant entered the home of [REDACTED]. Upon gaining entry to the home, the Defendant bludgeoned [REDACTED] to death with a hammer and sexually assaulted her. [REDACTED]'s body was found in the morning by her children as they prepared for school.

The Defendant was charged with first degree murder, sexual battery and burglary. He was tried and convicted on all charges. During the penalty phase of the trial, the State presented aggravating circumstances supporting imposition of the death penalty. The defense presented mitigating circumstances urging a sentence of life in prison. After considering the aggravating and mitigating circumstances, the jury voted 10 to 2 for the imposition of the death sentence. After a *Spencer* hearing, the trial court sentenced the Defendant to death.

The Defendant has exhausted his appellate remedies and his conviction and judgment have been affirmed. *See, Owen v. State*, 596 So. 2d 985 (Fla 1992)(judgment and sentence affirmed); *Owen v. Florida*, 506 U.S. 921 (1992)(*certiorari* denied); *Owen v. State*, 773 So.2d 510 (Fla. 2000)(denial of motion for post-conviction relief affirmed); *Owen v. Florida*, 532 U.S. 964 (2001)(*certiorari* denied) *Owen v. Crosby*, 854 So.2d 182 (Fla 2003)(order denying post-conviction relief and denial of petition for habeas corpus affirmed). The Defendant's judgment and sentence became final on October 13, 1992.

The Defendant now seeks to have his death sentence vacated pursuant to *Hurst v. Florida*, U.S. , 136 S.Ct. 616, 193 L.Ed.2d 504 (2016)(*Hurst I*) and *Hurst v. State*, 201 So.3d 40 (Fla. 2016)(*Hurst II*). The Defendant is not eligible for relief under either *Hurst I* or *Hurst II*.

In *Asay v. State*, 210 So.3d 1 (Fla. 2016), the Florida Supreme Court held that *Hurst* does not apply retroactively to capital defendants whose sentences were final before *Ring v. Arizona*, 536 U.S. 584 (2002). *Ring* was decided on June 24, 2002. The Florida Supreme Court recently reaffirmed *Asay* in *Hitchcock v. State*, 2017 WL 3431500 (Fla. August 10, 2017). The United States Supreme Court has denied review of

Hitchcock. Therefore, it is clear that *Hurst* does not apply to any capital defendant whose case became final before June 24, 2002.

It is undisputed in this case that the Defendant's judgment and sentence became final before *Ring* was decided on June 24, 2002. While the Defendant invites the Court to disregard *Asay*, the Court declines this invitation. The Defendant is not legally entitled to have his death sentence set aside in this case.¹

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that Defendant Duane Eugene Owen's Successive Motion to Vacate Judgment of Conviction and Sentence is **DENIED**.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida this 5th day of January, 2018.



JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

Copies Furnished to:

Office of the State Attorney, Aletha McRoberts, Esq.- FelDivW@sa15.org;
e-postconviction@sa15.org
Attorney for the Defendant, Celia Terenzio, Esq.- Celia.Terenzio@myfloridalegal.com

¹ The Defendant was also sentenced to death for the murder of Karen Slattery in Case No. 1984CF004014AMB. The Slattery case became final after *Ring* and the Court will be required to perform a harmless error analysis.

Appendix B: The opinion of the Florida Supreme Court affirming the denial of postconviction relief, reported at 247 So.3d 394 (Fla. 2018).

247 So.3d 394
Supreme Court of Florida.

Duane Eugene OWEN, Appellant,
v.
STATE of Florida, Appellee.

No. SC18-382

|
[June 26, 2018]

Synopsis

Background: Defendant sought collateral relief after his death sentence was affirmed on appeal, 596 So.2d 985. The Circuit Court, Palm Beach County, No. 501984CF004000AXXXMB Glenn David Kelley, J., denied the motion. Defendant appealed.

The Supreme Court held that defendant was not entitled to collateral relief under *Hurst v. State*, 202 So.3d 40.

Affirmed.

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

Lewis and Canady, JJ., concurred in result.

An Appeal from the Circuit Court in and for Palm Beach County, Glenn David Kelley, Judge—Case No. 501984CF004000AXXXMB

Attorneys and Law Firms

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

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Celia A. Terenzio, Senior Assistant Attorney General, West Palm Beach, Florida, for Appellee

Opinion

PER CURIAM.

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

Owen'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). Owen responded to this Court's order to show cause

arguing why *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017), *cert. denied*, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017), should not be dispositive in this case.

After reviewing Owen's response to the order to show cause, as well as the State's arguments in reply, we conclude that Owen is not entitled to relief. Owen was sentenced to death following a jury's recommendation for death by a vote of ten to two. *Owen v. State*, 596 So.2d 985, 987 (Fla. 1992). His sentence of death became final in 1992. *Owen v. Florida*, 506 U.S. 921, 113 S.Ct. 338, 121 L.Ed.2d 255 (1992). Thus, *Hurst* does not apply retroactively to Owen's sentence of death. See *Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Owen's motion.

The Court having carefully considered all arguments raised by Owen, 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

247 So.3d 394, 43 Fla. L. Weekly S271