

DOCKET NO. _____
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

BILLY LEON KEARSE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

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

CAPITAL CASE

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

Petitioner, BILLY LEON KEARSE, by and through undersigned counsel, and pursuant to 28 U.S.C. § 2101(d) and Rules 13.5 and 30.2 of this Court, respectfully requests an extension of time of sixty (60) days to file a petition for writ of certiorari to the Florida Supreme Court, to and including January 28, 2019.

Mr. Kearse is a death-sentenced inmate in the custody of the State of Florida. This Court has jurisdiction to review the decision of the Florida Supreme Court

under 28 U.S.C. § 1257(a).

Mr. Kearsé was convicted of one count of first-degree murder and sentenced to death in the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida. This case involves the decision of the Florida Supreme Court entered on August 30, 2018, affirming the denial of Mr. Kearsé's successive motion for postconviction relief, including his claim that his sentences of death are unconstitutional in light of the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). See *Kearsé v. State*, 252 So. 3d 693 (Fla. 2018). ("Attachment A").

Mr. Kearsé's time to petition for certiorari in this Court regarding the Florida Supreme Court's decision expires on November 28, 2018. This application for a sixty day extension is being filed more than ten days before that date. Undersigned counsel shows the following good cause in support of this request.

Mr. Kearsé is represented by the Office of the Capital Collateral Regional Counsel-South (CCRC-South), a Florida state agency charged with the responsibility of representing indigent death row inmates. Undersigned counsel is assigned as lead counsel for Mr. Kearsé and carries a full caseload of capital postconviction cases. Undersigned counsel is lead counsel on several cases being litigated in the trial courts, Florida Supreme Court, and federal courts at various stages of the postconviction process. Counsel's caseload includes two cases that are

being litigated simultaneously and require extensive postconviction investigation, with initial state motions for postconviction relief due to be filed in February 2019.

Due to undersigned counsel's caseload and the posture of his cases, counsel has not been able to prepare a proper petition for writ of certiorari in Mr. Kearse's case. If the sixty day extension of time is granted, counsel's intention is to file a petition for certiorari on or before January 28, 2019.

Wherefore, Mr. Kearse respectfully requests that an order be entered extending his time to petition for certiorari to and including January 28, 2019.

Respectfully submitted,

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ATTACHMENT A

252 So.3d 693
Supreme Court of Florida.

Billy Leon KEARSE, Appellant,
v.
STATE of Florida, Appellee.

No. SC18-458
|
August 30, 2018

Synopsis

Background: Following affirmance of conviction of first-degree murder and sentence of death, 770 So.2d 1119, petitioner sought postconviction relief. The Circuit Court, St. Lucie County, No. 561991CF000136AXXXXX, Dan Lewis Vaughn, J., denied motion. Petitioner appealed.

The Supreme Court held that decision of Court in *Hurst v. Florida*, 202 So.3d 40, did not apply retroactively to petitioner.

Affirmed.

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

Canady, C.J., concurred in result.

***694** An Appeal from the Circuit Court in and for St. Lucie County, Dan Lewis Vaughn, Judge - Case No. 561991CF000136AXXXXX

Attorneys and Law Firms

Neal Andre Dupree, Capital Collateral Regional Counsel, and Paul Kalil, Assistant Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida, for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Leslie T. Campbell, Assistant Attorney General, West Palm Beach, Florida, for Appellee

Opinion

PER CURIAM.

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

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

After reviewing Kearse's response to the order to show cause, as well as the State's arguments in reply, we conclude that Kearse

is not entitled to relief. Kearse was sentenced to death following a jury's unanimous recommendation for death. *Kearse v. State*, 770 So.2d 1119, 1123 (Fla. 2000). His sentence of death became final in 2001. *Kearse v. Florida*, 532 U.S. 945, 121 S.Ct. 1411, 149 L.Ed.2d 352 (2001). Thus, *Hurst* does not apply retroactively to Kearse's sentence of death. See *Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Kearse's motion.

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

LEWIS, QUINCE, POLSTON,
LABARGA, and LAWSON, JJ., concur.

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

CANADY, C.J., concurs 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.), *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* that *Hurst* should apply retroactively to cases like Kearse's. *Id.* at 220-23 (Pariente, *695 J., dissenting). Of course, if *Hurst*¹ applied to Kearse's case, he would likely not be entitled to relief based on the jury's unanimous recommendation for death, coupled with the absence of any stricken aggravating factors. *Kearse v. State*, 770 So.2d 1119, 1123 (Fla. 2000); see *Davis v. State*, 207 So.3d 142, 174-75 (Fla. 2016).

Notwithstanding, I emphasize Justice Anstead's dissenting opinion on direct appeal that Justice Shaw and I joined, which argued that “this case is clearly not one of the most aggravated, least mitigated of first-degree murders.” *Kearse*, 770 So.2d at 1136 (Anstead, J., dissenting). Regardless of whether *Hurst* applies retroactively to Kearse's case, Justice Anstead's conclusion “that this is clearly not a death case” is significant. *Id.* at 1138.

All Citations

252 So.3d 693, 43 Fla. L. Weekly S320

Footnotes

¹ *Hurst v. State (Hurst)*, 202 So.3d 40 (Fla. 2016), *cert. denied*, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017).