

258 So.3d 1199
Supreme Court of Florida.

Paul Glen EVERETT, Appellant,
v.
STATE of Florida, Appellee.

No. SC17–1863
|
[May 24, 2018]

Synopsis

Background: Following affirmance of convictions and sentence of death, 893 So.2d 1278, and denial of initial motion for postconviction relief and petition for writ of habeas corpus, 54 So.3d 464, defendant filed a successive postconviction motion to vacate his death sentence. The Circuit Court, Bay County, Brantley S. Clark, Jr., J., summarily denied motion. Defendant appealed.

[Holding:] The Supreme Court held that any error in the imposition of death penalty under *Hurst v. State*, 202 So.3d 40, was harmless in light of jury's unanimous recommendation of death.

Affirmed.

Pariente, J., concurred in result with opinion.

Quince, J., filed dissenting opinion.

West Headnotes (2)

[1] Sentencing and Punishment

🔑 Unanimity

A jury unanimously finds all of the necessary facts for the imposition of a death sentence by virtue of its unanimous recommendation.

1 Cases that cite this headnote

[2] Sentencing and Punishment

🔑 Harmless and reversible error

Any error in the imposition of death penalty under *Hurst v. State*, 202 So.3d 40, was harmless in the case of defendant who received a unanimous jury recommendation of death.

1 Cases that cite this headnote

An Appeal from the Circuit Court in and for Bay County, Brantley S. Clark, Jr., Judge—Case No. 032001CF002956XXAXMX

Attorneys and Law Firms

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

Opinion

PER CURIAM.

Paul Glen Everett, a prisoner under sentence of death, appeals the circuit court's order summarily denying his successive motion for postconviction relief, which was filed under Florida Rule of Criminal Procedure 3.851. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.

In 2002, a jury convicted Everett of first-degree murder, burglary of a dwelling with a battery, and sexual battery involving serious physical force. After hearing evidence at the penalty phase, the jury unanimously recommended a sentence of death for the first-degree murder by a vote of twelve to zero. We affirmed Everett's convictions and sentence of death on direct appeal. *Everett v. State*, 893 So.2d 1278 (Fla. 2004), cert. denied, 544 U.S. 987, 125 S.Ct. 1865, 161 L.Ed.2d 747 (2005). We also upheld the denial of his initial motion for postconviction relief and denied his petition for a writ of habeas corpus. *Everett v. State*, 54 So.3d 464 (Fla. 2010).

In January 2017, Everett filed a successive postconviction motion to vacate his death sentence in light of *Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and *Hurst v. State* (*Hurst*), 202 So.3d 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2161, 198

L.Ed.2d 246 (2017). In September 2017, the circuit court summarily denied the motion. This appeal follows. During the pendency of this case in this Court, we directed the parties to file briefs addressing why the circuit court's order should not be affirmed based on our precedent in *Hurst*, *1200 *Davis v. State*, 207 So.3d 142 (Fla. 2016), *cert. denied*, — U.S. —, 137 S.Ct. 2218, 198 L.Ed.2d 663 (2017), and *Mosley v. State*, 209 So.3d 1248 (Fla. 2016).

[1] In *Davis*, we held that a jury's unanimous recommendation of death is “precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death” because a “jury unanimously f[inds] all of the necessary facts for the imposition of [a] death sentence[] by virtue of its unanimous recommendation[].” 207 So.3d at 175. We have consistently relied on *Davis* to deny *Hurst* relief to defendants who have received a unanimous jury recommendation of death. *See, e.g., Guardado v. Jones*, 226 So.3d 213, 215 (Fla. 2017), *cert. denied*, — U.S. —, 138 S.Ct. 1131, 200 L.Ed.2d 729 (2018); *Bevel v. State*, 221 So.3d 1168, 1178 (Fla. 2017); *Cozzie v. State*, 225 So.3d 717, 733 (Fla. 2017), *cert. denied*, — U.S. —, 138 S.Ct. 1131, 200 L.Ed.2d 729 (2018); *Morris v. State*, 219 So.3d 33, 46 (Fla.), *cert. denied*, — U.S. —, 138 S.Ct. 452, 199 L.Ed.2d 334 (2017); *Oliver v. State*, 214 So.3d 606, 617–18 (Fla.), *cert. denied*, — U.S. —, 138 S.Ct. 3, 199 L.Ed.2d 272 (2017); *Truehill v. State*, 211 So.3d 930, 956–57 (Fla.), *cert. denied*, — U.S. —, 138 S.Ct. 3, 199 L.Ed.2d 272 (2017); *Tundidor v. State*, 221 So.3d 587, 607–08 (Fla. 2017), *cert. denied*, — U.S. —, 138 S.Ct. 829, 200 L.Ed.2d 326 (2018). Everett is among those defendants who received a unanimous jury recommendation of death, and his arguments do not compel departing from our precedent.

[2] Accordingly, because we conclude that any *Hurst* error in this case was harmless beyond a reasonable doubt, we affirm the circuit court's order summarily denying Everett's successive motion for postconviction relief.

It is so ordered.

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

CANADY and POLSTON, JJ., concur in result.

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

QUINCE, J., dissents with an opinion.

PARIENTE, J., concurring in result.

I agree that Everett is not entitled to *Hurst*¹ relief. I write separately to explain that it is the combination of the jury's unanimous recommendation for death and the absence of any stricken aggravating factor or other issue that would undermine the reliability of the unanimous recommendation² that allows this Court to conclude that the *Hurst* error was harmless beyond a reasonable doubt in Everett's case.

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); *see Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016).

² *See, e.g., Reynolds v. State*, 251 So.3d 811, 829–30, 2018 WL 1633075, *14 (Fla. Apr. 5, 2018) (Pariente, J., dissenting) (explaining how *Hurst* could have affected defendant's decision to waive mitigation); *Grim v. State*, 244 So.3d 147, 148–52, 2018 WL 1531121, *2–5 (Mar. 29, 2018) (Pariente, J., dissenting) (explaining how a mitigation waiver affects the *Hurst* harmless error analysis); *Middleton v. State*, 42 Fla. L. Weekly S637, 2017 WL 2374697, *1–2 (Fla. June 1, 2017) (Pariente, J., dissenting) (explaining how a stricken aggravating factor affects the *Hurst* harmless error analysis); *see also Davis v. State*, 207 So.3d 142, 173–75 (Fla. 2016), *cert. denied*, — U.S. —, 137 S.Ct. 2218, 198 L.Ed.2d 663 (2017).

QUINCE, J., dissenting.

I cannot agree with the majority's finding that the *Hurst* error in this case was harmless beyond a reasonable doubt. As I *1201 have stated previously, “[b]ecause *Hurst* ‘requires a jury, not a judge, to find each fact necessary to impose a sentence of death,’ the error cannot be harmless where such a factual determination was not made.” *Hall v. State*, 212 So.3d 1001, 1036–37 (Fla. 2017) (Quince, J., concurring in part and dissenting in part) (quoting *Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 619, 193 L.Ed.2d 504 (2016)); *see also Truehill v. State*, 211 So.3d 930, 961–62 (Fla. 2017) (Quince, J., concurring in part and dissenting in part). While the trial court here found the heinous, atrocious, or cruel (HAC) aggravator proven,

this aggravator requires a factual determination that can only be made by the jury. Therefore, I dissent.

All Citations

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