

CAPITAL CASE

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN LOVEMAN REESE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI**

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APPENDIX A

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1992-CF-04174-AXXX-MA

DIVISION: CR-E

STATE OF FLORIDA

v.

JOHN LOVEMAN REESE,
Defendant.

**ORDER DISMISSING DEFENDANT'S SUCCESSIVE MOTION FOR
POSTCONVICTION RELIEF AND CORRECTION OF ILLEGAL SENTENCE**

This matter came before the Court on “Defendant’s Successive Motion for Postconviction Relief for Correction of an Illegal Sentence (Death-Penalty Case) (Rules 3.851 and 3.800, Fla. R. Crim. P.),” (“Motion”) pursuant to Florida Rule of Criminal Procedure 3.851, filed on July 7, 2017 and “Defendant’s Motion for Rehearing On Court’s March 15, 2018 Determination to Dismiss Without Prejudice Successive Postconviction Motion Claim Two, Regarding New, Forensic Brain-Scanning Technologies Likely to Reveal Additional Mental-Health Mitigation,” (“Motion for Rehearing”), filed on March 15, 2018.¹

On December 7, 2017, a Case Management Conference (“CMC”) was held on Defendant’s Motion. Defendant represented to the Court that he needed a continuance of the CMC in order to obtain Dr. Barry Crown’s report about Defendant.² The case was continued until January 11, 2018. On this date, Defendant again represented to the Court that he was still waiting on Dr. Crown’s report. The case was continued for a second time until March 5, 2018.

¹ Defendant’s Motion for Rehearing references a March 15, 2018 court date, but counsel appeared before the Court on March 5, 2018, and filed the Motion for Rehearing on March 15, 2018.

² Presumably this report would contain findings of additional mental-health mitigation brought about by the alleged advancements in brain scanning technology.

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Prior to the March 5, 2018 court date, Defendant filed “Defendant’s Notice of Adverse Supreme Court Ruling Pertinent to Postconviction Claim One and Notice of Need for Additional Time for Defense Neuro-psychologist to Complete His Work On The Remaining Postconviction Claims,” (“Notice of Adverse”). In his Notice of Adverse, Defendant conceded that in Miller v. Jones, 43 Fla. L. Weekly S53 (Fla. Jan. 31, 2018), the Florida Supreme Court held that Hurst v. State, 202 So. 3d 40 (Fla. 2016) is not retroactive to defendants whose convictions and sentences became final before 2002. Defendant also informed the Court that he had still not received Dr. Crown’s report.

On March 5, 2018, The Court held the third part of Defendant’s CMC. At the hearing, Defendant again told the Court that he did not have Dr. Crown’s report and made general argument as to why an Evidentiary Hearing was necessary on his Motion. Defendant also requested another continuance of the hearing. Having already continued the CMC twice before, the Court denied the continuance and concluded the CMC. Following the March 5, 2018 CMC, Defendant filed “Defendant’s Motion for Rehearing On Court’s March 15, 2018 Determination to Dismiss Without Prejudice Successive Postconviction Motion Claim Two, Regarding New, Forensic Brain-Scanning Technologies Likely to Reveal Additional Mental-Health Mitigation,” on March 15, 2018.³

Ground One

In Ground One of Defendant’s Motion he alleges his sentence of death is unconstitutional in light of Hurst v. Florida and Hurst v. State. Defendant’s conviction and sentence became final on March 5, 2001. Reese v. Florida, 532 U.S. 910 (2001); Fla. R. Crim. P. 3.851(d)(1)(b). As conceded in his Notice of Adverse, Defendant is not eligible for Hurst relief because his

³ Defendant filed his Motion for Rehearing prior to the Court issuing a written order disposing of Defendant’s Motion.

conviction and sentence became final prior to 2002. See Asay v. State, 210 So. 3d 1 (Fla. 2016). Therefore, Defendant's claim in Ground One is denied.

Grounds Two and Three

A claim for postconviction relief of a death sentence must be filed within one year of the defendant's conviction and sentence becoming final. Fla. R. Crim. P. 3.851(d)(1). If a claim is filed after the one-year time window, the claim is procedurally barred as untimely unless the defendant alleges "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence." Fla. R. Crim. P. 3.851(d)(2)(a). In addition, a defendant must demonstrate how this newly discovered evidence would probably yield a less severe sentence. Preston v. State, 970 So. 2d 789, 797-98 (Fla. 2007). A motion filed pursuant to Rule 3.851 is also separately procedurally barred as successive if a state court has previously ruled on another Rule 3.851 postconviction motion in the same case.

Defendant's conviction and sentence became final on March 5, 2001, thus, the time to file postconviction claims pursuant to Rule 3.851 expired on March 5, 2002. On September 27, 2001, Defendant filed a motion for postconviction relief, which was denied via order on June 26, 2007 and supplemental order on July 18, 2008. The mandate affirming the denial of Defendant's postconviction motion was issued on July 24, 2009. Reese v. State, 14 So. 3d 913 (Fla. 2009). Thus, not only are any claims filed by Defendant procedurally barred as untimely, but are also barred as successive. Therefore, Defendant must satisfy one of the exceptions to the procedural bars found in Rule 3.851 before the Court can reach the merits of his instant claims.

Ground Two

In Ground Two of his Motion, Defendant claims there is a possibility that new forensic brain-scanning technologies will reveal additional mental-health mitigation. He alleges that in recent years there have been advancements in MRI and PET scanning technologies that have resulted in the discovery of previously unknown brain damage and defects in other individuals. Defendant argues this advancement in scanning technology is *likely* to reveal previously unknown evidence of Defendant's "organic brain damage, brain defects, and 'thinking' impediments." (Motion at 22.) Defendant, however, has not yet actually had the current scanning technology applied to him.

It is clear from Defendant's Motion that his claim is premature. Defendant has based his claim on the possibility that new evidence will be revealed and not actual newly discovered evidence. While, the technology may be new, it is not newly discovered evidence of mitigation until it has been applied to Defendant. In its current form, the claim of newly discovered evidence is too speculative in nature to warrant relief. This trend of speculation continued at the CMC where, after having multiple opportunities, Defendant failed to produce any evidence that results had been obtained. Thus, it is clear that Defendant is still gathering material to formulate his claim and at this stage any argument of when the evidence was discoverable with due diligence or that the evidence would produce a less severe sentence is speculative. Therefore, Defendant's claim is not legally sufficient and is dismissed.

Ground Three

In Ground Three of his Motion, Defendant alleges there is a likelihood he is intellectually disabled in light of Hall v. Florida. Defendant's argument in Ground Three is brief compared to the argument in Ground Two, but he essentially argues that the brain scanning technology


discussed in Ground Two is *likely* to produce evidence that Defendant is intellectually disabled. Defendant's claim in Ground Three is also premature without actual test results applicable to the instant case. Defendant speculates that once this new testing is performed on him there will be previously undiscovered intellectual disability revealed. Without actual test results, however, the claim is not ripe for the Court to consider the applicability of the new testing to Defendant's case. Therefore, Defendant's claim in Ground Three is dismissed as legally insufficient.

Motion for Rehearing

Defendant's Motion for Rehearing was filed before a written order was issued by the Court on Defendant's underlying Motion. The Motion for Rehearing was considered and the Court finds that Defendant has failed to allege new or different grounds for why this Motion should not be dismissed. Accordingly, it is:

ORDERED that “Defendant’s Successive Motion for Postconviction Relief for Correction of an Illegal Sentence (Death-Penalty Case)(Rules 3.851 and 3.800, Fla. R. Crim. P.),” (“Motion”) pursuant to Florida Rule of Criminal Procedure 3.851, filed on July 7, 2017 and “Defendant’s Motion for Rehearing On Court’s March 15, 2018 Determination to Dismiss Without Prejudice Successive Postconviction Motion Claim Two, Regarding New, Forensic Brain-Scanning Technologies Likely to Reveal Additional Mental-Health Mitigation,” (“Motion for Rehearing”), filed on March 15, 2018, are **DISMISSED**. Defendant shall have thirty days from the date that this Order is filed to make an appeal, by filing Notice of Appeal with the Clerk of Court.

DONE in Jacksonville, Duval County, Florida on April 27, 2018.


STEVEN B. WHITTINGTON
Circuit Judge

Copies To:


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CERTIFICATE OF SERVICE

I do certify that a copy hereof has been furnished to Defendant by United States
mail this on April 27, 2018.


Deputy Clerk

Case No.: 16-1992-CF-04174-AXXX-MA
/jlb

APPENDIX B

Supreme Court of Florida

No. SC18-815

JOHN LOVEMAN REESE,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

January 4, 2019

PER CURIAM.

John Loveman Reese, a prisoner under sentence of death, appeals the circuit court's order denying in part and dismissing in part 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 1993, a jury convicted Reese of first-degree murder, sexual battery with great force, and burglary with assault. *Reese v. State*, 694 So. 2d 678, 680 (Fla. 1997). After hearing evidence at the penalty phase, the jury recommended a death sentence by an eight-to-four vote. *Id.* The trial judge accepted the recommendation and imposed a sentence of death. *Id.* On direct appeal in 1997, we affirmed the conviction. *Id.* at 685. However, we found the sentencing order

deficient for failing to “expressly discuss[] and weigh[] the evidence offered in mitigation,” as required by *Campbell v. State*, 571 So. 2d 415, 419-20 (Fla. 1990). *Reese*, 694 So. 2d at 684. Accordingly, we remanded for the entry of a new sentencing order. *Id.* In 1999, we again remanded the sentencing order, directing the trial court “to conduct a new hearing . . . before determining an appropriate sentence.” *Reese v. State*, 728 So. 2d 727, 728 (Fla. 1999). In 2000, we reviewed the revised sentencing order and affirmed the sentence of death. *Reese v. State*, 768 So. 2d 1057, 1060 (Fla. 2000). Reese’s conviction and death sentence became final on March 5, 2001, when the United States Supreme Court denied his petition for writ of certiorari. *Reese v. Florida*, 532 U.S. 910 (2001); see Fla. R. Crim. P. 3.851(d)(1)(B).

In 2009, we affirmed the denial of Reese’s initial motion for postconviction relief. *Reese v. State*, 14 So. 3d 913, 920 (Fla. 2009). In 2017, Reese filed a successive postconviction motion to vacate his death sentence under *Hurst v. Florida* (*Hurst v. Florida*), 136 S. Ct. 616 (2016), and *Hurst v. State* (*Hurst*), 202 So. 3d 40 (Fla. 2016), *cert. denied*, 137 S. Ct. 2161 (2017).¹ The circuit court entered an order summarily denying his claim. This appeal followed.

1. Reese raised two additional claims: (1) there is a possibility that new forensic brain scanning technologies will reveal additional mental health mitigation; and (2) there is a likelihood that he has an intellectual disability under

In *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016), *cert. denied*, 138 S. Ct. 41 (2017), we held that *Hurst* and *Hurst v. Florida* do not apply retroactively to defendants whose death sentences were final before the United States Supreme Court rendered its decision in *Ring v. Arizona*, 536 U.S. 584 (2002). See *Hitchcock v. State*, 226 So. 3d 216, 217 (Fla.) (concluding that *Asay* denies “retroactive application of *Hurst v. Florida* as interpreted in *Hurst v. State* to defendants whose death sentences were final when the Supreme Court decided *Ring*”), *cert. denied*, 138 S. Ct. 513 (2017); *Mosley v. State*, 209 So. 3d 1248, 1274 (Fla. 2016) (“[W]e have . . . held in *Asay v. State*, that *Hurst* does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in *Ring*.”). Therefore, because Reese’s sentence became final prior to the issuance of *Ring*, he is not entitled to relief under *Hurst* and *Hurst v. Florida*.

Nor is Reese entitled to relief on his other claims. Reese first asserts that our retroactivity scheme runs afoul of the Fourteenth Amendment’s Equal Protection Clause. However, in *Lambrix v. State*, 227 So. 3d 112, 113 (Fla. 2017), we rejected the claim that our “decisions regarding the retroactivity of *Hurst v. Florida* and *Hurst* violate equal protection.” Similarly without merit is Reese’s contention

Hall v. Florida, 572 U.S. 701 (2014). The circuit court dismissed both claims as unripe, and Reese did not appeal their dismissal.

that the retroactivity cutoff at *Ring* cannot withstand Eighth Amendment scrutiny because it results in arbitrary and capricious imposition of the death penalty. This “argument is not novel and has been previously rejected by this Court.” *Asay v. State*, 224 So. 3d 695, 703 (Fla. 2017). And Reese’s allegation that his death sentence violates the Eighth Amendment under *Caldwell v. Mississippi*, 472 U.S. 320 (1985), is foreclosed by our recent decision in *Reynolds v. State*, 251 So. 3d 811 (Fla.), *cert. denied*, 139 S. Ct. 27 (2018). There, we held that “a *Caldwell* claim based on the rights announced in *Hurst* and *Hurst v. Florida* cannot be used to retroactively invalidate the jury instructions that were proper at the time under Florida law.” *Reynolds*, 251 So. 3d at 825 (citing *Romano v. Oklahoma*, 512 U.S. 1, 9 (1994)). Accordingly, we affirm the circuit court’s order denying in part and dismissing in part Reese’s successive motion for postconviction relief.

It is so ordered.

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

CANADY, C.J., concurs in result.

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

QUINCE, J., recused.

NO MOTION FOR REHEARING WILL BE ALLOWED.

PARIENTE, J., concurring in result.

I concur in result because, although I recognize that this Court's decisions regarding the retroactivity of *Hurst*² are now final,³ I would grant a new penalty phase based on the jury's nonunanimous recommendation for death by a vote of eight to four. Per curiam op. at 1. As I have continuously explained, this Court's precedent setting the United States Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), as the cutoff for *Hurst* retroactivity results in unconstitutional arbitrariness. See *Hitchcock*, 226 So. 3d at 220-21 (Pariente, J., dissenting); *Asay V*, 210 So. 3d at 32-36 (Pariente, J., concurring in part and dissenting in part). This case is one of those very specific instances.

Although this Court first affirmed Reese's conviction in 1997, his sentence of death did not become final until March 2001—thirteen months before *Ring*. Per curiam op. at 1-2.⁴ In fact, in 1999, this Court remanded Reese's case for the second time to the trial court to allow the parties to present written and oral arguments before determining an appropriate sentence. Per curiam op. at 2.

2. *Hurst v. State (Hurst)*, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017); see *Hurst v. Florida*, 136 S. Ct. 616 (2016).

3. *Hitchcock v. State*, 226 So. 3d 216 (Fla.), cert. denied, 138 S. Ct. 513 (2017); *Asay v. State (Asay V)*, 210 So. 3d 1 (Fla. 2016), cert. denied, 138 S. Ct. 41 (2017); *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016).

4. *Reese v. State*, 768 So. 2d 1057 (Fla. 2000); *Reese v. State*, 728 So. 2d 727 (Fla. 1999); *Reese v. State*, 694 So. 2d 678 (Fla. 1997).

Similar to the situation in *Spencer v. State*, 43 Fla. L. Weekly S558 (Fla. Nov. 8, 2018), had “this Court . . . reversed for a new penalty phase rather than remanding the case for ‘reconsideration’ of the aggravation and mitigation by the trial court,” Reese would have likely been entitled to *Hurst* relief. *Spencer*, 43 Fla. L. Weekly at S559 (Pariente, J., dissenting); see *Mosley*, 209 So. 3d at 1283.

Because *Hurst* should apply to Reese’s case, I would grant Reese a new penalty phase.

An Appeal from the Circuit Court in and for Duval County,
Steven B. Whittington, Judge - Case No. 161992CF004174AXXXMA

Christopher J. Anderson, Neptune Beach, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Jennifer A. Donahue, Assistant Attorney
General, Tallahassee, Florida,

for Appellee

APPENDIX C

APPENDIX C

Persons who will/have obtain(ed) Hurst Relief under Mosleyⁱ

Item	Name	Jury Vote (Pre-Hurst)	Circuit	County
1	Abdool, Dane	10-2	9	Orange
2	Altersberger, Joshua	9-3	10	Highlands
3	Anderson, Charles	8-4	17	Broward
4	Andres, Rafael	9-3	11	Miami-Dade
5	Armstrong, Lance	9-3	17	Broward
6	Ault, Howard	10-2	17	Broward
7	Bailey, Robert	11-1	14	Bay
8	Baker, Cornelius	9-3	7	Flagler
9	Banks, Donald	10-2	4	Duval
10	Bargo, Michael	10-2	5	Marion
11	Barnhill, Arthur	9-3	18	Seminole
12	Belcher, James	9-3	4	Duval
13	Braddy, Harrel	11-1	11	Miami-Dade
14	Bradley, Brandon	10-2	18	Brevard
15	Brookins, Elijah	10-2	2	Gadsden
16	Brooks, Lamar	9-3	1	Okaloosa
17	Brown, Thomas	8-4	4	Duval
18	Butler, Harry	11-1	6	Pinellas
19	Buzia, John	8-4	18	Seminole
20	Calhoun, Johnny	8-4	14	Holmes
21	Calloway, Tavares David	7-5	11	Miami-Dade
22	Campbell, John	9-3	5	Citrus
23	Cannon, Marvin	9-3	2	Gadsden
24	Card, James Armando	11-1	14	Bay
25	Carr, Emilia	7-5	5	Marion

26	Carter, Pinkney	9-3	4	Duval
27	Caylor, Matthew	8-4	14	Bay
28	Cole, Tiffany	9-3	4	Duval
29	Conde, Rory	9-3	11	Miami-Dade
30	Cox, Allen	10-2	5	Lake
31	Davis, Adam William	7-5	13	Hillsborough
32	Davis, Barry	9-3	1	Walton
33	Davis, William	7-5	18	Seminole
34	Dennis, Labrant	11-1	11	Miami-dade
35	Deparvine, William James	8-4	13	Hillsborough
36	Deviney, Randall	8-4	4	Duval
37	Diaz, Joel	9-3	20	Lee
38	Doorbal, Noel	8-4	11	Miami-dade
39	Doty, Wayne	8-4	8	Bradford
40	Douglas, Luther	11-1	4	Duval
41	Dubose, Rasheem	8-4	4	Duval
42	Durousseau, Paul	10-2	4	Duval
43	Eaglin, Dwight	8-4	20	Charlotte
44	Ellerbee, Terry	11-1	19	Okeechobee
45	England, Richard	8-4	7	Volusia
46	Evans, Paul	9-3	19	Indian River
47	Evans, Wydell*	10-2	18	Brevard
48	Fletcher, Timothy	8-4	7	Putnam
49	Floyd, Maurice	11-1	7	Putnam
50	Frances, David	9-3	9	Orange
51	Francis, Carlton	8-4	15	Palm Beach
52	Franklin, Richard	9-3	3	Columbia
53	Glover, Dennis	10-2	4	Duval
54	Gonzalez, Leonard Patrick	10-2	1	Escambia
55	Gosciminski, Andrew	9-3	19	St. Lucie

56	Gregory, William	7-5	7	Flagler
57	Guzman, James	11-1	7	Volusia
58	Guzman, Victor	7-5	11	Miami-Dade
59	Hall, Donte	8-4	5	Lake
60	Hampton, John	9-3	6	Pinellas
61	Hayward, Steven	8-4	19	St. Lucie
62	Herard, James	8-4	17	Broward
63	Hernandez, Michael	11-1	1	Santa Rosa
64	Hernandez-alberto, Pedro	10-2	13	Hillsborough
65	Hertz, Guerry	10-2	2	Wakulla
66	Heyne, Justin	10-2	18	Brevard
67	Hobart, Robert	7-5	1	Santa Rosa
68	Hodges, Willie	10-2	1	Escambia
69	Hojan, Gerhard	9-3	17	Broward
70	Hoskins, Johnny	11-1	18	Brevard
71	Huggins, John	9-3	9	Orange
72	Hunter, Jerone	10-2	7	Volusia
73	Hurst, Timothy	7 - 5	1	Escambia
74	Israel, Connie	11-1	7	Putnam
75	Jackson, Kenneth	11-1	13	Hillsborough
76	Jackson, Kim	8-4	4	Duval
77	Jackson, Michael	8-4	4	Duval
78	Jackson, Ray	9-3	7	Volusia
79	Jeffries, Kevin	10-2	14	Bay
80	Johnson, Paul Beasley	11-1	10	Polk
81	Johnson, Richard	11-1	19	St. Lucie
82	Jordan, Joseph	10-2	7	Volusia
83	King, Cecil	8-4	4	Duval
84	Kirkman, Vahteice	10-2	18	Brevard
85	Kocaker, Genghis	11-1	6	Pinellas

86	Kopsho, William	10-2	5	Marion
87	Lawrence, Jonathan	11-1	1	Santa Rosa
88	Lebron, Jermaine	7-5	9	Osceola
89	Lebron, Joel	9-3	11	Miami-Dade
90	Looney, Jason	10-2	2	Wakulla
91	Lugo, Daniel	11-1	11	Miami-dade
92	Martin, Arthur	9-3	4	Duval
93	Martin, David	9-3	4	Clay
94	Matthews, Douglas	10-2	7	Volusia
95	McCoy, Richard (Rashid, Jamal)	7-5	4	Duval
96	McCoy, Thomas	11-1	1	Walton
97	McGirth, Renaldo	11-1	5	Marion
98	McKenzie, Norman	10-2	7	St. Johns
99	McClean, Derrick	9-3	9	Orange
100	McMillian, Justin	10-2	4	Duval
101	Merck, Troy	9-3	6	Pinellas
102	Miller, Lionel	11-1	9	Orange
103	Morris, Dontae	10-2	13	Hillsborough
104	Mosley, John	8-4	4	Duval
105	Murray, Gerald	11-1	4	Duval
106	Nelson, Micah	9-3	10	Polk
107	Newberry, Rodney	8-4	4	Duval
108	Okafor, Bessman	11-1	9	Orange
109	Orme, Roderick	11-1	14	Bay
110	Pagan, Alex	7-5	17	Broward
111	Parker, J.B.	11-1	19	Martin
112	Partin, Phillip	9-3	6	Pasco
113	Pasha, Khalid	11-1	13	Hillsborough
114	Patrick, Eric	7-5	17	Broward
115	Peterson, Charles	8-4	6	Pinellas

116	Peterson, Robert	7-5	4	Duval
117	Pham, Tai	10-2	18	Seminole
118	Phillips, Galante	7-5	4	Duval
119	Poole, Mark	11-1	10	Polk
120	Rigterink, Thomas	7-5	10	Polk
121	Rimmer, Robert	9-3	17	Broward
122	Robards, Richard	7-5	6	Pinellas
123	Rodgers, Theodore	8-4	9	Orange
124	Schoenwetter, Randy	10-2	18	Brevard
125	Seibert, Michael	9-3	11	Miami-dade
126	Serrano, Nelson	9-3	10	Polk
127	Sexton, John	10-2	6	Pasco
128	Sheppard, Billy	8-4	4	Duval
129	Simmons, Eric	8-4	5	Lake
130	Simpson, Jason	8-4, 9-3	4	Duval
131	Smith, Corey	10-2	11	Miami-dade
132	Smith, Joseph	10-2	12	Sarasota
133	Smith, Sean (Dolan, Darling)	11-1	9	Orange
134	Smith, Stephen	9-3	20	Charlotte
135	Smith, Terry	8-4, 10-2	4	Duval
136	Snelgrove, David	8-4	7	Flagler
137	Taylor, John	10-2	4	Clay
138	Tisdale, Eriese	9-3	19	St. Lucie
139	Troy, John	11-1	12	Sarasota
140	Turner, James	10-2	7	St. Johns
141	Victorino, Troy	11-1	7	Volusia
142	Wade, Alan	11-1	4	Duval
143	Wheeler, Jason	10-2	5	Lake
144	White, Dwayne	8-4	18	Seminole
145	White, William Melvin	10-2	9	Orange

146	Wilcox, Darius	7-5	17	Broward
147	Williams, Donald	9-3	5	Lake
148	Williams, Ronnie	10-2	17	Broward
149	Woodel, Thomas	7-5	10	Polk
150	Wright, Ralph*	7-5	6	Pinellas
151	Zommer, Todd	10-2	9	Osceola

*Persons who died of natural causes (Mr. Evans) or were exonerated (Mr. Wright).

Hannah Gorman,
The Center for Florida Capital Representation at Florida International University
College of Law
May 9, 2019.

ⁱ Information based upon a review of the cases of individuals listed on Department of Corrections, *Death Row Roster* (Spring 2016), available at <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx>

APPENDIX D

APPENDIX D

Persons who will not obtain *Hurst* Relief under *Asay*ⁱ

Item	Name	Finality Date	Jury Vote	Circuit	County
1	Alston, Pressley	3/17/1999	9-3	4	Duval
2	Anderson, Richard	10/7/1991	11-1	13	Hillsborough
3	Arbelaez, Guillermo	5/23/1994	11-1	11	Miami-Dade
4	Archer, Robin	10/7/1996	7-5	1	Escambia
5	Asay, Mark *	10/7/1991	9-3	4	Duval
6	Atwater, Jeffrey	4/18/1994	11-1	6	Pinellas
7	Bates, Kayle	10/5/1987	9-3	14	Bay
8	Beasley, Curtis	12/21/2000	10-2	10	Polk
9	Blanco, Omar	5/12/1997	10-2	17	Broward
10	Bogle, Brett	11/13/1995	10-2	13	Hillsborough
11	Booker, Stephen	5/14/2001	8-4	8	Alachua
12	Bradley, Donald	1/16/1998	10-2	4	Clay
13	Branch, Eric Scott*	5/12/1998	10-2	1	Escambia
14	Brown, Paul Alfred	10/9/2001	7-5	13	Hillsborough
15	Cave, Alphonso	10/4/1999	11-1	6	Pinellas
16	Cherry, Roger*	4/16/1990	9-3	7	Volusia
17	Clark, Ronald	9/13/1982	11-1	4	Duval
18	Consalvo, Robert A.	10/11/2000	11-1	17	Broward
19	Cumming-el, Frederick W.	6/16/1997	8-4	11	Miami-Dade
20	Davis, Mark	9/4/1992	8-4	6	Pinellas
21	Davis, Toney	6/15/1998	11-1	4	Duval
22	Derrick, Samuel Jason	1/23/1995	7-5	6	Pasco
23	Dillbeck, Donald	3/20/1995	8-4	2	Leon
24	Downs, Ernest	11/3/1980	8-4	4	Duval
25	Doyle, Daniel	1/3/1985	8-4	17	Broward
26	Duckett, James	12/10/2001	8-4	5	Lake
27	Evans, Steven	12/10/2001	11-1	9	Orange
28	Finney, Charles	1/22/1996	9-3	13	Hillsborough
29	Ford, James	5/28/2002	11-1	20	Charlotte
30	Foster, Charles	10/1/1979	8-4	14	Bay
31	Foster, Kevin	1/22/2001	9-3	20	Lee
32	Fotopoulos, Konstantin	5/17/1993	8-4	7	Volusia
33	Franqui, Leonardo	3/23/1998 1/8/2002	9-3 10-2	11	Miami-Dade
34	Freeman, John	6/28/1991	9-3	4	Duval

35	Gamble, Guy	2/20/1996	10-2	5	Lake
36	Gaskin, Louis	9/4/1992	8-4	7	Flagler
37	Gonzalez, Ricardo	4/6/1998	8-4	11	Miami-Dade
38	Gordon, Robert	1/16/1998	9-3	6	Pinellas
39	Griffin, Michael	5/30/2002	10-2	11	Miami-Dade
40	Gudinas, Thomas	10/20/1997	10-2	20	Collier
41	Haliburton, Jerry	6/28/1991	9-3	15	Palm Beach
42	Hamilton, Richard	6/26/1998	10-2	3	Hamilton
43	Hartley, Kenneth	10/6/1997	9-3	4	Duval
44	Harvey, Harold	2/21/1989	11-1	19	Indian River
45	Heath, Ronald	6/26/1995	10-2	8	Alachua
46	Herring, Ted*	11/5/1984	8-4	7	Volusia
47	Hitchcock, James	12/4/2000	10-2	9	Orange
48	Hodges, George	11/29/1993	10-2	13	Hillsborough
49	Holland, Albert	10/1/2001	8-4	17	Broward
50	Hunter, James	2/20/1996	9-3	7	Volusia
51	Jackson, Etheria	1/23/1989	7-5	4	Duval
52	James, Edward	12/1/1997	11-1	18	Seminole
53	Jeffries, Sonny	10/9/2001	11-1	9	Orange
54	Jennings, Brandy	6/24/1999	10-2	20	Collier
55	Jennings, Bryan	2/22/1988	11-1	18	Brevard
56	Johnson, Emanuel	4/22/1996	8-4, 10-2	12	Sarasota
57	Johnson, Ronnie	1/26/1998	7-5, 9-3	11	Miami-Dade
58	Jones, Harry	6/19/1995	10-2	2	Leon
59	Jones, Marvin	10/6/1997	10-2	4	Duval
60	Jones, Randall	10/4/1993	9-3	7	Putnam
61	Jones, Victor	10/2/1995	10-2	11	Miami-Dade
62	Kelley, William	10/6/1986	8-3 (Not in error)	10	Highlands
63	Kilgore, Dean*	10/6/1997	8-4	10	Polk
64	Lambrix, Michael*	5/12/1997	11-1	20	Glades
65	Lawrence, Gary	1/20/1998	10-2	1	Santa Rosa
66	Lightbourn, Ian	2/21/1984	7-5	5	Marion
67	Lucas, Harold	10/4/1993	9-3	20	Lee
68	Lukehart, Andrew	6/25/2001	9-3	4	Duval
69	Marshall, Matthew	5/17/1993	Override	19	Martin
70	McDonald, Meryl	9/17/1999	9-3	6	Pinellas
71	Melton, Antonio	10/31/1994	8-4	1	Escambia
72	Mendoza, Marbel	10/5/1998	7-5	11	Miami-Dade
73	Miller, David	10/24/2000	7-5	4	Duval
74	Moore, Thomas	4/20/1998	9-3	4	Duval

75	Morris, Robert	2/21/2002	8-4	10	Polk
76	Morton, Alvin	9/28/2001	11-1	6	Pasco
77	Muehleman, Jeffrey	10/5/1987	10-2	6	Pinellas
78	Mungin, Anthony	10/6/1997	7-5	4	Duval
79	Nixon, Joe	10/7/1991	10-2	2	Leon
80	Oats, Sonny	10/7/1985	Not on Record	5	Marion
81	Occhicone, Dominick	5/20/1991	7-5	6	Pasco
82	Overton, Thomas	5/13/2002	8-4	16	Monroe
83	Owen, Duane	10/13/1992	10-2	15	Palm Beach
84	Pace, Bruce	10/5/1992	7-5	1	Santa Rosa
85	Peede, Robert	6/23/1986	11-1	9	Orange
86	Peterka, Daniel	1/23/1995	8-4	1	Okaloosa
87	Phillips, Harry	1/28/1985	7-5	11	Miami-Dade
88	Pietri, Noberto	6/19/1995	8-4	15	Palm Beach
89	Pittman, David	5/15/1995	9-3	10	Polk
90	Ponticelli, Anthony	10/18/1993	9-3	5	Marion
91	Pooler, Leroy	10/5/1998	9-3	15	Palm Beach
92	Pope, Thomas	1/11/1984	9-3	17	Broward
93	Puiatti, Carl	10/3/1988	11-1	6	Pasco
94	Randolph, Richard	11/16/1990	8-4	7	Putnam
95	Reaves, William	11/7/1994	10-2	19	Indian River
96	Reed, Grover	10/1/1990	11-1	4	Duval
97	Reese, John	3/5/2001	8-4	4	Duval
98	Rhodes, Richard	12/5/1994	10-2	6	Pinellas
99	Rose, James	4/25/1985	9-3	13	Hillsborough
100	Rose, Milo	8/16/1985	9-3	6	Pinellas
101	San Martin, Pablo	10/5/1998	9-3	11	Miami-Dade
102	Scott, Paul	12/13/1982	7-5	15	Palm Beach
103	Shere, Richard	9/4/1991	7-5	5	Hernando
104	Sireci, Henry	11/4/1991	11-1	9	Orange
105	Sliney, Jack	2/23/1998	7-5	20	Charlotte
106	Smith, Derrick	2/21/1995	8-4	6	Pinellas
107	Sochor, Dennis	2/22/1994	10-2	17	Broward
108	Spencer, Dusty Ray	10/6/1997	7-5	9	Orange
109	Stein, Steven	10/3/1994	10-2	4	Duval
110	Stephens, Jason	11/13/2001	9-3	4	Duval
111	Stewart, Kenneth	4/6/1992	10-2	13	Hillsborough
112	Suggs, Ernest	4/24/1995	7-5	1	Walton
113	Sweet, William	2/28/1994	10-2	4	Duval
114	Taylor, Perry	11/14/1994	8-4	13	Hillsborough
115	Taylor, Steven	10/3/1994	10-2	4	Duval

116	Thomas, William	11/17/1997	11-1	4	Duval
117	Thompson, William	3/1/1988	7-5	11	Miami-Dade
118	Trease, Robert	10/11/2000	11-1	12	Sarasota
119	Trepal, George	1/18/1994	9-3	10	Polk
120	Trotter, Melvin	10/6/1997	11-1	12	Manatee
121	Walton, Jason	1/8/1990	9-3	10	Pinellas
122	Watts, Tony	6/22/1992	7-5	4	Duval
123	Whitfield, Ernest	10/5/1998	7-5	12	Sarasota
124	Willacy, Chadwick	11/10/1997	11-1	18	Brevard
125	Williamson, Dana	4/28/1997	11-1	17	Broward
126	Wright, Joel	1/21/1986	9-3	7	Putnam
127	Zack, Michael	10/2/2000	11-1	1	Escambia
128	Zakrzewski, Edward	1/25/1999	7-5, Override	1	Okaloosa
129	Zeigler, William	3/22/1982	Override	4	Duval

*Persons who were executed (Mr. Asay, Mr. Branch, Mr. Lambrix), died of natural causes (Mr. Kilgore) or resented to life (Mr. Cherry, Mr. Herring)

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March 14, 2019.

¹ Information based upon a review of the cases of individuals listed on Department of Corrections, *Death Row Roster* (Spring 2016), available at <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx>