APPENDIX A

Supreme Court of Florida

No. SC18-1495

CHARLES WILLIAM FINNEY,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

December 28, 2018

PER CURIAM.

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

Finney's motion sought relief pursuant to the United States Supreme Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), and our decision on remand in *Hurst v. State* (*Hurst*), 202 So. 3d 40 (Fla. 2016), *cert. denied*, 137 S. Ct. 2161 (2017). Finney responded to this Court's order to show cause arguing why *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S. Ct. 513 (2017), and

Finney v. State, 235 So. 3d 279 (Fla.), *cert. denied*, 139 S. Ct. 197 (2018), should not be dispositive in this case.

After reviewing Finney's response to the order to show cause, as well as the State's arguments in reply, we conclude that our prior denial of Finney's postconviction appeal raising similar claims is a procedural bar to the claim at issue in this appeal, which in any event, does not entitle him to *Hurst* relief. *See Finney*, 235 So. 3d at 279-80; *Hitchcock*, 226 So. 3d at 217; *see also Foster v. State*, No. SC18-860, 2018 WL 6379348, at *2-4 (Fla. Dec. 6, 2018) (explaining why the "elements of 'capital first-degree murder' " argument derived from *Hurst* and the legislation implementing *Hurst* "has no merit"). Accordingly, we affirm the denial of Finney's motion.

It is so ordered.

LEWIS, POLSTON, LABARGA, and LAWSON, JJ., concur.
CANADY, C.J., and PARIENTE, J., concur in result.
QUINCE, J., recused.

NO MOTION FOR REHEARING WILL BE ALLOWED.

An Appeal from the Circuit Court in and for Hillsborough County,
Michelle Sisco, Judge - Case No. 291991CF001611000AHC

Neal Dupree, Capital Collateral Regional Counsel, Suzanne Keffer, Chief Assistant Capital Collateral Regional Counsel, and Scott Gavin, Staff Attorney, Southern Region, Fort Lauderdale, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Christina Z. Pacheco, Assistant Attorney General, Tampa, Florida,

for Appellee

APPENDIX B

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO.: 91-1611

v.

CHARLES FINNEY,
Defendant.
_____/

DIVISION: J

FINAL ORDER DENYING SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE PURSUANT TO RULE 3.851 WITH SPECIAL REQUEST FOR LEAVE TO AMEND

THIS MATTER is before the Court on Defendant's "Successive Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851," filed on March 12, 2018, pursuant to Florida Rule of Criminal Procedure 3.851. On April 2, 2018, the State filed its response to the successive motion and, April 30, 2018, the Court held a case management conference. After reviewing Defendant's motion, the State's response, the court file and record, as well as the additional arguments by counsel during the April 30, 2018, case management conference, the Court finds as follows.

Case History

On September 17, 1992, a jury found Defendant guilty of murder in the first degree (count one), armed robbery (count two) and dealing in stolen property (count four).[1] On September 18, 1992, the jury rendered an advisory verdict recommending by a vote of nine to three that the trial court impose the death penalty upon Defendant. On November 10, 1992, the Court sentenced Defendant to death on count one, life in prison on count two, and fifteen years in prison on count four. Defendant's judgments and sentences were affirmed. *See Finney v. State*, 660 So. 2d 674

[1] Count three was nolle prossed.

(Fla. 1995). The United Stated Supreme Court denied certiorari on January 22, 1996. *See Finney v. Florida*, 516 U.S. 1096 (1996).

This instant motion is Defendant's sixth successive motion for postconviction relief; Defendant's initial and successive postconviction motions were denied and each denial was affirmed on appeal. *See Finney v. State*, 831 So. 2d 651 (Fla. 2002); *Finney v. State*, 907 So. 2d 1170 (Fla. 2005) (table); *Finney v. State*, 18 So. 3d 527 (Fla. 2009) (table); *Finney v. State*, 91 So. 3d 781 (Fla. 2012); *Finney v. State*, 192 So. 3d 36 (Fla. 2015); *Finney v. State*, 235 So. 3d 279 (Fla. 2018). Defendant now files the instant motion and asserts one ground for relief.

CLAIM I

MR. FINNEY'S DEATH SENTENCE VIOLATES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION BECAUSE UNDER THE REVISED FLA. STAT. § 921.141 DEATH IS AN AUTHORIZED SENTENCING OPTION ONLY UPON FINDING THE NECESSARY ELEMENTS REQUIRED TO CONVICT OF THE GREATER OFFENSE OF CAPITAL FIRST DEGREE MURDER.

In his sixth successive motion, Defendant asserts his motion is timely filed "pursuant to the enactment of Chapter 2017-1, Laws of Florida on March 13, 2017, and its confirmation of the statutory construction recognized by the Florida Supreme Court in *Hurst v. State*." At the April 30, 2018, case management conference, Defendant asserted his claim is not a *Hurst* claim, but is based on the enactment of Chapter 2017-1 and a structural error in his sentence, and that his allegations have not been previously raised here or addressed by this Court or any court.

Defendant alleges that his death sentence violates the due process clause and revised section 921.141, Florida Statutes, because "death is an authorized sentencing option only upon finding the necessary elements required to convict of the greater offense of capital first degree murder." Defendant asserts a death sentence is not authorized where a defendant "has only been convicted of first degree murder." Defendants cites to *Hurst v. State*, 202 So. 3d 40, 53-54 (Fla.

2016), and asserts the Florida Supreme Court therein identified the elements for a conviction of the higher offense of capital first degree murder and acknowledged that the elements of capital first degree murder were "longstanding and appeared in the statute." Specifically, Defendant cites to the following,

> We also conclude that, just as elements of a crime must be found unanimously by a Florida jury, all these findings necessary for the jury to essentially convict a defendant of capital murder - thus allowing imposition of the death penalty - are also elements that must be found unanimously by the jury. Thus, we hold that in addition to unanimously finding the existence of any aggravating factor, the jury must also unanimously find that the aggravating factors are sufficient for the imposition of death and unanimously find that the aggravating factors outweigh the mitigation before a sentence of death may be considered by the judge.

Hurst v. State, 202 So. 3d at 53–54.

Defendant further alleges chapter 2017-1 was subsequently enacted and it revised section 921.141 to confirm those same elements that must be proven beyond a reasonable doubt before a death sentence can be imposed. Defendant asserts, "Under the revised § 921.141, the statutory maximum sentence that can be imposed on a first degree murder conviction is one of life imprisonment. For a death sentence to be permissible, the defendant must be convicted of the next higher degree of murder, i.e., capital first degree murder." Defendant contends that "a unanimous jury's finding that the State has proven the necessary elements beyond a reasonable doubt is functionally a verdict finding the defendant guilty of the greater offense of capital first degree murder."

Defendant cites to *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *In re Winship*, 397 U.S. 358 (1970) and alleges the due process clause requires a jury determination of guilt beyond a reasonable doubt as to each and every element of the crime charged. Defendant cites to *Alleyne v. United States*, 133 S. Ct. 2145, 2160 (2013), and argues "the facts necessary to increase the

authorized punishment to include death are elements of a new or separate offense." Defendant posits, "Under the revised § 921.141, first degree murder plus the additional elements set forth in the statute constitute a new offense, i.e., capital first degree murder. . . . therefor[] due process requires all of its elements to be proven beyond a reasonable doubt."

Defendant asserts the instant case is analogous to that of *Fiore v. White*, 531 U.S. 225 (2001) and argues that like *Fiore*, "the decision in *Hurst v. State* did not create a new rule; it merely identified the substantive law set forth in the previous enacted version of [section] 921.141." Defendant claims this case requires the same result as *Fiore*, specifically, "Absent a jury determination of each element of capital first degree murder beyond a reasonable doubt, there cannot be a constitutionally valid determination of guilt and/or sentence." Defendant posits, "A conviction of capital murder without a unanimous jury's finding that the State proved those additional elements beyond a reasonable [doubt] violates the Due Process Clause" and "[w]ithout a constitutional conviction of capital first degree murder, any death sentence imposed is illegal because it is in excess of the statutory maximum for a conviction of first degree murder."

Defendant asserts, "Under the governing substantive law at the time of the [instant homicide], he was not convicted of capital first degree murder because the elements set forth in *Hurst v. State* and confirmed in Chapter 2017-1 were not found to have been proven beyond a reasonable doubt by a unanimous jury" and the jury was never properly instructed. Defendant contends his "conviction and sentence are not valid as he was never convicted under Florida law of the offense of capital first degree murder." Defendant requests that the Court vacate his conviction and death sentence.

In its response, the State asserts Defendant's motion is untimely, successive, procedurally barred and meritless. The State asserts the instant motion is untimely where *Hurst* does not apply

retroactively to this case, and procedurally barred where Defendant already raised a *Hurst* claim and a claim pursuant to chapter 2017-1, and this Court denied relief because *Hurst* was not retroactive to his case. The State also asserts the Florid Supreme Court has already rejected claims based on chapter 2017-1 and cites to various cases.[2] The State requests that the Court summarily deny Defendant's motion.

Although Defendant claims that the instant claim is not a *Hurst* claim, the Court finds Defendant's allegations are essentially predicated on *Hurst v. State*, as well as its codification in chapter 2017-1. However, it appears to the Court that the Florida Supreme Court has established a bright-line cut-off point for any *Hurst*-type or *Hurst*-related claims; specifically, the Florida Supreme Court has repeatedly denied relief to all *Hurst*-related claims, including those based on the enactment of chapter 2017-1, to defendants (including Defendant here) whose sentences became final prior to the issuance of *Ring*.[3] *See Finney v. State*, 235 So. 3d 279, 280 (Fla. 2018) ("Finney's sentence of death became final in 1996 . . . [t]hus, *Hurst* does not apply retroactively to Finney's sentence of death."); *Lambrix v. State*, 227 So. 3d 112, 113 (Fla. 2017) ("To the extent Lambrix now raises additional claims to relief based on the rights announced in *Hurst* and *Perry*—including arguments based on the Eighth Amendment to the United States Constitution, denial of due process and equal protection based on the arbitrariness of this Court's retroactivity decisions in *Asay V* and *Mosley* . . . . and a substantive right based on the legislative passage of chapter 2017–1, Laws of Florida, prospectively requiring unanimous verdicts—we reject these arguments based on our recent opinions in *Hitchcock* . . . and *Asay [VI]*."); *Asay (VI) v. State*, 224 So. 3d 695 (Fla.

[2] The State also asserts the Florida Supreme Court has rejected similar allegations and cites to *Griffin v. State*, 236 So. 3d 237 (Fla. 2018), *petition for cert. filed*, No. 18-5147 (July 2, 2018), and attaches as Exhibit C appellant's response to the court's order to show cause in that case.

[3] *Ring v. Arizona*, 536 U.S. 584 (2002), was decided on June 24, 2002.

2017) (citing as controlling its decision in *Hitchcock*, and rejecting defendant's claims regarding the retroactive application of *Hurst v. State* and Chapter 2017–1); *Hannon v. State*, 228 So. 3d 505 (Fla. 2017) (affirming denial of successive motion for postconviction relief and noting, "Hannon contends that he raises novel chapter 2017–1, Laws of Florida, and Eighth Amendment challenges and that we have not addressed those issues; yet, Hannon is mistaken because we have expressly rejected these claims."); *Rodriguez v. Jones*, 2018 WL 1673423 (April 6, 2018) (denying petition for writ of habeas corpus claim that chapter 2017-1, Laws of Florida, created a substantive right that must be applied retroactively). In the absence of binding authority that revised section 921.141 is applicable to Defendant's case, the Court does not find Defendant's conviction and death sentence structurally infirm or constitutionally invalid.[4] **No relief is warranted on Defendant's sixth successive motion for postconviction relief.**

It is further **ORDERED AND ADJUDGED** that Defendant's Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851 is hereby **DENIED**.

Defendant has thirty days from the date of rendition to appeal this order.

DONE AND ORDERED in Chambers in Hillsborough County, Florida this ____ day of _____, 2018.

ORIGINAL SIGNED
JUL 31 2018

MICHELLE SISCO, Circuit Judge
MICHELLE SISCO
CIRCUIT JUDGE

[4] The Court notes that the Florida Supreme Court appears to have been unpersuaded by similar arguments. *See e.g., Griffin v. State*, 236 So. 3d 237 (Fla. 2018), *petition for cert. filed*, No. 18-5147 (July 2, 2018); *Jimenez v. State*, 2018 WL 3153525 (Fla. June 28, 2018); *Rodriguez v. Jones*, 2018 WL 1673423 (April 6, 2018).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this order has been furnished to Suzanne Myers Keffer, Esquire, and Scott Gain, Esquire, CCRC-South, 1 East Broward Blvd., Suite 444, Ft. Lauderdale, FL 33301; Christina Z. Pacheco, Esquire, Office of the Attorney General, 3507 East Frontage Road, Suite 200, Tampa, FL 33607-7013; John Terry, Esquire, Office of the State Attorney, 419 N. Pierce St., Tampa, FL 33602, by U.S. mail, on this 31 day of July, 2018.

Melissa A. Nichols
Deputy Clerk