

Supreme Court of Florida

No. SC17-686

ROBERT J. TREASE,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[April 26, 2018]

PER CURIAM.

We have for review Robert J. Trease's appeal of the circuit court's order denying Trease's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. We withdraw the opinion issued on January 24, 2018, and substitute this opinion in its place.

Trease'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*, 202 So. 3d 40 (Fla. 2016), *cert. denied*, 137 S. Ct. 2161 (2017). This Court stayed Trease's appeal pending the disposition of *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S. Ct. 513 (2017). After this Court decided

Hitchcock, Trease responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case. Then, after this Court decided *State v. Silvia*, 235 So. 3d 349 (Fla. 2018), Trease responded to this Court's order to show cause why *Silvia* should not be dispositive in this case.

After reviewing Trease's responses to the orders to show cause, as well as the State's arguments in reply, we conclude that Trease's valid waiver of postconviction proceedings and counsel in 2008 precludes him from claiming a right to relief under *Hurst*. See *Silvia*, 235 So. 3d at 351; *Trease v. State*, 41 So. 3d 119 (Fla. 2010). Moreover, Trease's sentence of death became final in 2001. *Trease v. State*, 768 So. 2d 1050, 1053 (Fla. 2000). Thus, even if Trease's postconviction waiver did not preclude him from raising a *Hurst* claim, *Hurst* would not apply retroactively to Trease's sentence of death. See *Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of relief.

It is so ordered.

LABARGA, C.J., and PARIENTE, QUINCE, POLSTON, and LAWSON, JJ.,
concur.

LEWIS, J., dissents.

CANADY, J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Sarasota County,
Rochelle Curley, Judge - Case No. 581995CF002207XXXANC

Mark E. Olive, Tallahassee, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Stephen D. Ake,
Senior Assistant Attorney General, Tampa, Florida,

for Appellee