No. _____

IN THE

Supreme Court of the United States

CHARLES GROVER BRANT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

DEATH PENALTY CASE

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INDEX TO APPENDICES

[IN SEPARATE VOLUME]

APPENDIX A

284 So.3d 398
Supreme Court of Florida.

Charles Grover BRANT, Appellant,
v.
STATE of Florida, Appellee.

No. SC18-1061
|
November 7, 2019

Synopsis

Background: Defendant, whose conviction for first-degree murder and sentence of death was affirmed on direct appeal, 21 So.3d 1276, appealed and petitioned for writ of habeas corpus. The Supreme Court, 197 So.3d 1051, affirmed and denied the petition. Defendant filed a successive postconviction motion. Circuit Court, 13th Judicial Circuit, Hillsborough County, Michelle Sisco, J., denied the motion, and defendant appealed.

[Holding:] The Supreme Court held that defendant's successive motion for postconviction relief was procedurally barred to the extent it was raised in his earlier postconviction appeal, and additionally failed on the merits.

Affirmed.

West Headnotes (1)

[1] **Criminal Law** ⇐ Particular issues and cases
Jury ⇐ Operation and effect

Defendant's successive motion for postconviction relief from sentence of death was procedurally barred to the extent it was raised in his earlier postconviction appeal, and additionally failed on the merits; defendant waived right to a penalty phase jury, and thus, was not entitled to relief under *Hurst v. Florida*, 136 S. Ct. 616 and *Hurst v. State* 202 So. 3d 40. Fla. R. Crim. P. 3.851.

***399** An Appeal from the Circuit Court in and for Hillsborough County, Michelle Sisco, Judge - Case No. 292004CF012631000AHC

Attorneys and Law Firms

Marie-Louise Samuels Parmer of Samuels Parmer Law Firm, P.A., Tampa, Florida, for Appellant

Ashley Moody, Attorney General, Tallahassee, Florida, and Christina Z. Pacheco, Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

Charles Grover Brant, 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.

For conduct arising from the 2004 killing of Sara Radfar, "Brant pleaded guilty to first-degree murder, sexual battery, kidnapping, grand theft of a motor vehicle, and burglary with assault or battery." *Brant v. State*, 21 So. 3d 1276, 1277 (Fla. 2009). "After a failed attempt to seat a penalty-phase jury ... Brant waived his right to a jury, and the penalty phase proceeded before the trial judge." *Brant v. State*, 197 So. 3d 1051, 1057 (Fla. 2016). The trial judge "sentenced Brant to death for the murder, concurrent terms of life imprisonment for the sexual battery, kidnapping, and burglary, and five years' imprisonment for the grand theft." *Id.* at 1062.

We affirmed Brant's convictions and sentences on direct appeal in 2009. *Brant*, 21 So. 3d at 1289. In 2014, Brant appealed the denial of his initial motion for postconviction relief and filed a petition for a writ of habeas corpus. *Brant*, 197 So. 3d at 1056. While his case was pending in this Court, the United States Supreme Court issued its decision in *Hurst v. Florida*, — U.S. —, 136 S. Ct. 616, 193 L.Ed.2d 504 (2016). Accordingly, we permitted Brant "to file supplemental briefing to address the impact of *Hurst* on his sentence." *Brant*, 197 So. 3d at 1079. In 2016, we rejected Brant's *Hurst v. Florida* claim, affirmed the denial of his initial postconviction motion, and denied his habeas petition. *Brant*, 197 So. 3d at 1079.

In 2017, Brant filed a successive postconviction motion, arguing that his death sentence was unconstitutional under *Hurst v. Florida* and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *cert. denied*, — U.S. —, 137 S. Ct. 2161, 198 L.Ed.2d 246 (2017). The circuit court summarily denied the motion. Brant appealed, and we directed the parties to show cause why the circuit court's order should not be affirmed based on *Mullens v. State*, 197 So. 3d 16 (Fla. 2016), *cert. denied*, — U.S. —, 137 S. Ct. 672, 196 L.Ed.2d 557 (2017).

We conclude that the circuit court properly denied relief. Brant's claim is procedurally barred to the extent it was raised in his earlier postconviction appeal, *see Brant*, 197 So. 3d at 1079, and additionally fails on the merits. In *Mullens*, we held that a defendant's waiver of his right to a penalty phase jury was not rendered invalid by the subsequent changes in the law wrought by *Hurst v. Florida* and *Hurst v. State*. *Mullens*, 197 So. 3d at 38-40. Since issuing *Mullens*, we have consistently reaffirmed the principle that a defendant who waives his or her right to a penalty phase ***400** jury is not entitled to relief under the *Hurst* decisions. *See, e.g.*, *Lynch v. State*, 254 So. 3d 312, 322 (Fla. 2018), *cert. denied*, — U.S. —, 139 S. Ct. 1266, 203 L.Ed.2d 283 (2019); *Hutchinson v. State*, 243 So. 3d 880, 883 (Fla.), *cert. denied*, — U.S. —, 139 S. Ct. 261, 202 L.Ed.2d 175 (2018); *Rodgers v. State*, 242 So. 3d 276, 276-77 (Fla.), *cert. denied*, — U.S. —, 139 S. Ct. 592, 202 L.Ed.2d 427 (2018); *Allred v. State*, 230 So. 3d 412, 413 (Fla. 2017); *Dessaure v. State*, 230 So. 3d 411, 412 (Fla. 2017). Brant is among those defendants who validly waived the right to a penalty phase jury, *see Brant*, 197 So. 3d at 1076, and his arguments do not compel departing from our precedent.

Accordingly, we affirm the circuit court's order summarily denying Brant's successive motion for postconviction relief.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ., concur.

All Citations

284 So.3d 398, 44 Fla. L. Weekly S232

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APPENDIX B

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

STATE OF FLORIDA **CASE NO.: 04-CF-012631**

v.

CHARLES GROVER BRANT, **DIVISION: J/TR2**
Defendant.
_____/

ORDER DENYING SUCCESSIVE MOTION PURSUANT TO FLA. R. CRIM. PRO. 3.851 TO VACATE SENTENCE OF DEATH

THIS MATTER is before the Court on Defendant's "Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to Vacate Sentence of Death," filed on December 21, 2017, pursuant to Florida Rule of Criminal Procedure 3.851(e)(2). On January 29, 2018, the State filed its response.[1] On February 13, 2018, the Court held a case management conference. After considering Defendant's motion and the State's response, as well as the arguments of counsel presented during the February 13, 2018, case management conference, the court file and record, the Court finds as follows.

CASE HISTORY

On May 25, 2007, Defendant pleaded guilty to first degree murder (count one), sexual battery (deadly weapon or force) (count two), kidnapping (count three), grand theft motor vehicle (count four), and burglary with assault/battery (count five). On August 22, 2007, Defendant waived his right to a penalty phase jury and advisory sentence. On November 30, 2007, the trial court sentenced Defendant to death on count one, life in prison on counts two, three and five, and five years in prison on count four, concurrently. The Florida Supreme Court affirmed Defendant's

[1] The State's response was originally due on January 10, 2018. No response was filed, therefore, on January 17, 2018, the Court ordered the State to respond to Defendant's motion within 30 days. On January 22, 2018, the State filed an acknowledgement of the Court's order, asserting it was not aware of and had not been served with Defendant's motion. On January 29, 2018, the State timely filed its response.

judgment and sentence of death, and its mandate issued on December 4, 2009. *See Brant v. State*, 21 So. 3d 1276 (Fla. 2009). Defendant did not file a petition for writ of certiorari with the Supreme Court of the United States, therefore, Defendant's judgment and sentence became final when the time for filing his petition expired on March 4, 2010. *See* Fla. R. Crim. P. 3.851(d)(1)(A).

Defendant filed his initial motion for postconviction relief on February 9, 2011. After various amendments and an evidentiary hearing on certain claims, the Court rendered a final order denying relief on February 5, 2014. Defendant appealed the denial of his motion for postconviction relief, and the Florida Supreme Court affirmed. *See Brant v. State*, 197 So. 3d 1051 (Fla. 2016).

Defendant now files the instant motion and raises one claim.

CLAIM

MR. BRANT COULD NOT KNOWINGLY HAVE WAIVED HIS RIGHTS TO A UNANIMOUS JURY VERDICT BECAUSE THAT RIGHT DID NOT YET EXIST. THEREFORE, HIS JURY WAIVER WAS NOT KNOWING AND VOLUNTARY AND WAS OBTAINED IN VIOLATION OF BRANT'S FIFTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND HIS CORRESPONDING RIGHTS UNDER THE DECLARATION OF RIGHTS OF THE FLORIDA CONSTITUTION.

Defendant raises the instant claim "[o]n the basis of new Florida law arising from *Mosley v. State*, *Bevel v. State*, *Hurst v. State*, and the enactment of Chapter 2017-1."[2] Defendant asserts his successive motion is filed within one year of the aforementioned statutory amendment and case law, therefore, his motion is timely.

In his motion, Defendant alleges pre-*Hurst*, a defendant could only waive his right to a jury recommendation of life or death. Defendant asserts he "waived only the right to a jury

[2] *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016), *Bevel v. State*, 221 So. 3d 1168 (Fla. 2017); *Hurst v. State*, 202 So. 3d 40 (Fla. 2016); Chapter 2017-1, Laws of Florida.

recommendation, not his then-unrecognized Eighth Amendment constitutional right to a unanimous jury fact-finding prior to imposition of death." Defendant further contends *Hurst* applies retroactively to his case because his conviction became final after *Ring* issued, and that the *Hurst* error here is not harmless. Defendant contends "no court has yet addressed [his] argument that he could not have knowingly waived his Eighth Amendment right to a unanimous fact-finding jury, since that right did not yet exist." Defendant asserts he could not validly waive a right that was not yet recognized by the courts, and cites to *Halbert v. Michigan*, 545 U.S. 605 (2005). Defendant posits that even if the Court finds "a pre-*Hurst* defendant could waive *Hurst* relief, Defendant's waiver was not knowing, voluntary . . . because it did not consider the possibility that Florida's death-sentencing scheme would be found unconstitutional." Defendant acknowledges that in *Mullens v. State*, 197 So. 3d 745 (Fla. 2016), *cert. denied*, 137 S. Ct. 672 (2017), the Florida Supreme Court held that capital defendants who waived their right to a penalty phase jury are not entitled to *Hurst* relief, but contends his current arguments are different than those addressed in *Mullens*, and the Court should not deny him relief based on *Mullens*. Defendant argues *Mullens* did not address his argument here that he could "not have knowingly waived his Eighth Amendment right to a unanimous fact-finding jury, since the right did not yet exist." Defendant requests that the Court vacate his death sentence and order a new penalty phase proceeding.

During the February 13, 2018, case management conference, postconviction counsel again argued Defendant's motion is timely and the instant allegations have not been previously addressed by the Florida Supreme Court. Counsel further acknowledged that *Mullens* and other Florida Supreme Court cases require a denial of Defendant's allegations on the merits.

THE STATE'S RESPONSE

In its response, the State asserts this claim is untimely, procedurally barred and meritless. The State asserts *Hurst* is inapplicable to Defendant because he waived his penalty

phase jury, therefore, "there is no retroactive right . . . that would render Brant's motion timely filed." The State further argues this claim is barred because the Florida Supreme Court has already denied Defendant *Hurst* relief, and his allegations are barred by the doctrine of the law of the case, collateral estoppel and res judicata. The State asserts Defendant's allegations are meritless as the Florida Supreme Court has held *Hurst* is inapplicable where a defendant waived his right to a penalty-phase jury, and squarely rejected such claims. The State cites to *Mullens* and its progeny. The State seeks summary denial of Defendant's motion.

DISCUSSION AND ORDER

After considering Defendant's motion and the State's response, as well as the arguments of counsel presented during the February 13, 2018, case management conference, the court file and record, the Court finds Defendant is not entitled to relief. To the extent Defendant's allegations were addressed in his previous postconviction appeal, the Court finds the instant claim is procedurally barred. *See Brant*, 197 So. 3d at 1079 (citing *Mullens* and finding Defendant's *Hurst* claim was necessarily precluded in postconviction proceedings where Defendant waived his right to a penalty-phase jury).[3]

The Court further finds Defendant is not entitled to relief as he waived his penalty phase jury and advisory recommendation. Although Defendant asserts his waiver was not knowingly and voluntarily entered, the only basis for his claim is that the right to jury fact-finding did not yet

[3] Additionally, the Court notes that in *Hutchison v. State*, the Florida Supreme Court stated, "[T]he defendant in *Brant* also challenged the validity of his waiver, arguing that counsel was ineffective in light of the change in *Hurst* just as Hutchinson argues in this case. In both *Mullens* and *Brant*, this Court found that the defendants' waivers were knowingly, intelligently, and voluntarily made based on their colloquies, even though those waivers were made with the advice of counsel based on pre-*Hurst* law." *Hutchinson*, SC17-1229, 2018 WL 1324791, at *3 (Fla. Mar. 15, 2018). The Court further notes that a motion for rehearing has been filed in *Hutchinson*, and the decision is not yet final.

exist, essentially seeking *Hurst*-based relief. However, in *Mullens*, the Florida Supreme Court held that a defendant "cannot subvert the right to jury factfinding by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence." *Mullens*, 197 So. 3d at 40. The Florida Supreme Court has consistently applied *Mullens* and denied any *Hurst* relief to capital defendants, including Brant, who waived the right to a penalty phase jury. *See Brant*, 197 So. 3d at 1079 (rejecting Defendant's postconviction *Hurst* claim, citing *Mullens*); *Allred v. State*, 230 So. 3d 412 (Fla. 2017) ("This Court has consistently relied on *Mullens* to deny *Hurst* relief to defendants that have waived the right to a penalty phase jury."); *Twilegar v. State*, 228 So. 3d 550 (Fla. 2017) ("As the circuit court correctly recognized, the *Hurst* decisions do not apply to defendants like Twilegar who waived a penalty phase jury."); *Knight v. State*, 211 So. 3d 1, 5 n. 2 (Fla. 2016) (rejecting Defendant's *Hurst* claim and noting "Knight waived his penalty phase jury and, thus, is not entitled to relief."); *Covington v. State*, 228 So. 3d 49, 69 (Fla. 2017) ("A defendant like Covington who has waived the right to a penalty phase jury is not entitled to relief under *Hurst*."); *Quince v. State*, 233 So. 3d 1017 (Fla. 2018) ("We have since consistently relied on *Mullens* to deny *Hurst* relief to defendants who waived a penalty phase jury."); *Hutchinson*, 2018 WL 1324791 at *2-3 ("While *Hurst* is retroactive to defendants whose sentences became final after *Ring* was decided, *Hurst* relief is not available for defendants who have waived a penalty phase jury.").[4]

Based on the foregoing, no relief is warranted on Defendant's motion.

[4] In *Hutchison*, the court also rejected defendant's claim under *Halbert v. Michigan* that he could not have waived a post-*Hurst* right to a unanimous jury recommendation because the right did yet exist at the time. *Hutchinson*, 2018 WL 1324791 at *2-3.

It is therefore **ORDERED AND ADJUDGED** that Defendant's Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to Vacate Sentence of Death is hereby **DENIED**.

This is a final, appealable order. Defendant has 30 days from the date of rendition to appeal this order. A timely filed motion for rehearing shall toll the finality of this order.

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

ORIGINAL SIGNED

MICHELLE SISCO
Circuit Judge

APR 09 2018

MICHELLE SISCO
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this order has been furnished to Marie-Louise Samuels Parmer, Esquire, Samuels Parmer Law Firm, P.A., P.O. Box 18988, Tampa, FL 33679, by regular U.S. mail; Christina Z. Pacheco, Office of the Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607, by regular U.S. mail; Ronald Gale, Esquire, Office of the State Attorney, 419 N. Pierce St., Tampa, FL 33602, by inter-office mail, on this 9th day of April, 2018.

Melisse A. Mathews
Deputy Clerk

APPENDIX C

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **CASE NO. 04-CF-12631**

CHARLES GROVER BRANT,

Defendant.

_____/

MOTION FOR REHEARING ON ORDER DENYING FIRST SUCCESSIVE MOTION PURSUANT TO FLA. R. CRIM. PRO. 3.851 TO VACATE SENTENCE OF DEATH

CHARLES GROVER BRANT, Defendant in the above-captioned action, respectfully moves this Court for rehearing, pursuant to Fla. R. Crim. P. 3.851, of this Court's Order, entered April 9, 2018, denying his First Successive Motion to vacate his sentence of death. Mr. Brant respectfully alleges that this Court misapprehended important facts and/or points of law. In support thereof, Mr. Brant, through counsel, submits as follows:

1. On December 21, 2017, Mr. Brant timely filed a First Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to vacate sentence of death. The State filed its Answer on January 29, 2018.
2. This Court conducted a Case Management Conference on February 13, 2018 and heard argument from the Parties.
3. On April 9, 2018, this Court entered an Order denying Mr. Brant's Motion.

4. This timely Motion for Rehearing follows.

5. Mr. Brant argued that he could not have waived his right to a unanimous jury verdict under the Eighth Amendment, and that *Mullens v. State*, 197 So. 3d 16 (Fla. 2016) did not preclude relief because that case involved a claim of ineffective assistance of counsel and a violation of the Sixth Amendment. "We need not extensively consider the implications of *Hurst* to determine that Mullens cannot avail himself of relief pursuant to *Hurst. Hurst* said nothing about whether a defendant could waive the Sixth Amendment right to jury factfinding in sentencing procedures as recognized by *Ring* . ." *Id.* at 38.

6. The *Mullens* court was dismissive of the Defendant's argument as to jury waiver in the sentencing phase and engaged in a cursory analysis of a Sixth Amendment argument and thus does not preclude Mr. Brant from relief.

7. This Court also cited *Hutchison v. State,* where the Florida Supreme Court stated:

> Hutchinson also contends that under *Halbert v. Michigan*, 545 U.S. 605, 623, 125 S.Ct. 2582, 162 L.Ed.2d 552 (2005), he could not have waived a post-*Hurst* right to a unanimous jury recommendation before the imposition of death because the courts did not recognize the right at the time. The United States Supreme Court held in *Halbert* that the Due Process and Equal Protection Clauses require appointment of first-tier postconviction counsel for indigent defendants and that the defendant's plea of nolo contendere did not preclude the court from granting him relief. Hutchinson contends that this Court should follow *Halbert* in finding that *Hurst* created a new right to a jury trial distinct from the pre-*Hurst* right, and further find that his jury waiver does not preclude *Hurst* relief. The United States Supreme Court rejected an argument similar to Hutchinson's in *McMann v. Richardson*, 397 U.S. 759, 773–74, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970), holding that a change in the law regarding coerced confessions did not liberate a defendant from a plea entered under the old law.
>
> *Hutchison v. State*, -- So. 3d (Fla. March 15, 2018; 2018 WL 1324791).

8. However, the issue in *Mann* was one of whether counsel was ineffective in failing to advise the client.

> In our view a defendant's plea of guilty based on reasonably competent advice is an intelligent plea not open to attack on the ground that counsel may have misjudged the admissibility of the defendant's confession. Whether a plea of guilty is unintelligent and therefore vulnerable when motivated by a confession erroneously thought admissible in evidence depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.

McMann v. Richardson, 397 U.S. 759, 770–71, 90 S. Ct. 1441, 1448–49, 25 L. Ed. 2d 763 (1970)

9. Mr. Brant has alleged in his Successive Motion that his waiver was invalid because he could not knowingly waive a right that did not yet exist, and thus, the Florida Supreme Court's holding in *Hutchison* notwithstanding, he is entitled to set aside his unconstitutionally obtained sentence of death.

WHEREFORE, Mr. Brant respectfully requests that this Court reconsider its ruling, grant rehearing and set aside his sentence of death.

Respectfully Submitted,

/s/ Marie-Louise Samuels Parmer
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Florida Bar Number 0005584
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed using the Florida Courts efiling Portal which has electronically served the Office of the Attorney General, capapp@myfloridalegal.com; Assistant Attorney General Christina Z. Pacheco, christina.pacheco@myfloridalegal.com ; Ron Gale, Assistant State Attorney, mailprocessingstaff@sao13th.com , and the Honorable Michelle Sisco, Circuit Court Judge, siscodm@fljud13.org, on this 24th day of April, 2018.

/s/Marie-Louise Samuels-Parmer
MARIE-LOUISE SAMUELS-PARMER
Fla. Bar No. 0005584

Copies provided by U.S. Mail to:

Charles Brant
DOC #588873
Union Correctional Institution
P. O. Box 1000
Raiford, FL 32083

APPENDIX D

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

STATE OF FLORIDA **CASE NO.: 04-CF-012631**

v.

CHARLES GROVER BRANT, **DIVISION: J/TR2**
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS MATTER came before the Court on Defendant's "Motion for Rehearing on Order Denying First Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to Vacate Sentence of Death," filed on April 24, 2018. After reviewing Defendant's motion, the court file and record, the Court finds as follows.

In his motion, Defendant seeks reconsideration of the Court's "Order Denying Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to Vacate Sentence of Death," rendered on April 9, 2018, wherein the Court denied Defendant's "Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to Vacate Sentence of Death," filed on December 21, 2017.

However, the Court finds its April 9, 2018, order adequately addressed the issues raised in Defendant's successive motion. **No relief is warranted on Defendant's motion for rehearing.**

It is therefore **ORDERED AND ADJUDGED** that Defendant's motion for rehearing is hereby **DENIED**.

This is a final, appealable order. Defendant has thirty days from the date of rendition to appeal.

DONE and ORDERED in Chambers in Tampa, Hillsborough County, Florida, this _____ day of May, 2018.

ORIGINAL SIGNED
MAY 02 2018
MICHELLE SISCO
CIRCUIT JUDGE

ORIGINAL SIGNED
MAY 02 2018
MICHELLE SISCO
CIRCUIT JUDGE

MICHELLE SISCO
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this order has been furnished to Marie-Louise Samuels Parmer, Esquire, Samuels Parmer Law Firm, P.A., P.O. Box 18988, Tampa, FL 33679, by regular U.S. mail; Christina Z. Pacheco, Office of the Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607, by regular U.S. mail; Ronald Gale, Esquire, Office of the State Attorney, 419 N. Pierce St., Tampa, FL 33602, by inter-office mail, on this 2nd day of May, 2018.

Vale Ardense
Deputy Clerk

APPENDIX E

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA CASE NO. 04-CF-012631

vs.

CHARLES G. BRANT DIVSION: TD 2
Defendant.

****

This case came on to be heard before the HONORABLE WILLIAM E. FUENTE, Circuit Judge, at the Hillsborough County Courthouse Annex, Tampa, Florida, on August 22, 2007 commencing at approximately 9:00 a.m.

APPEARANCES:

JALAL HARB, Assistant State Attorney,
800 East Kennedy Boulevard,
Tampa, Florida 33602
On behalf of the State.

ROBERT FRASER, Esquire
213 Providence Road
Brandon, FLorida 33509
On behalf of the Defendant.

RICK TERRANA, Esquire
2917 West Kennedy Boulevard
Suite 120
Tampa, Florida 33609
On behalf of the Defendant.

PROCEEDINGS

(THE FOLLOWING PROCEEDINGS ENSUED IN OPEN COURT:)

THE COURT: We're here on the matter of the second phase, penalty phase, for Charles Brant.

Mr. Fraser, have you and Mr. Terrana and Mr. Brant decided what you want to do?

MR. FRASER: Mr. Brant has changed his mind since yesterday, and he's elected to go nonjury before the Court.

THE COURT: Assuming -- and I'll talk with him about that in a minute. But assuming we do that, how do you want to proceed? Do you want to proceed with the balance of this week and into next week and divvy it up as need be?

MR. FRASER: There's really no reason why we can't, other than the fact that I called all our witnesses last night and told them that it wasn't going to be this week or next. But I think the ones who were down here are still here. And I haven't cancelled any flight reservations for Dr. Wu from California, so presumably we could put it on. It's a little discombobulating, as Your Honor might recall, to effectively continue a case and then

reinstate it.

THE COURT: You mean for the witnesses?

MR. FRASER: Well, for counsel.

THE COURT: I mean, I'll do whatever ya'all want to do. I'm not in any rush or not in any -- Mr. Harb, your thoughts, sir?

MR. HARB: Judge, it is the State's wish that we start as soon as possible; however, I will suggest that we be given some time because also I was notified after court yesterday that the defendant wishes to go jury and he's not -- he's now contemplating nonjury. We made some phone calls notifying people that they're not --

THE COURT: Well, today is Wednesday. Assuming this stays this way; that is, he does want to go without a jury. Are you saying you can put some evidence on today or not until tomorrow?

MR. HARB: What I'm asking, Judge, if we can report back to the Court in a couple hours. We need to go back and make some phone calls.

THE COURT: I'm sorry. With respect to witnesses, if you have witnesses that are here, if we do it nonjury, there's no reason I can't

hear mitigation first and aggravation later. I can do it any way you want.

MR. FRASER: Exactly. As a practical matter, we're ready to go ahead. In terms of, as I say, we're kind of thrown off our pins by Mr. Brant's change of mind because he was SO adamant last night I didn't think there was any likelihood we were going to go nonjury. But again, there's no real reason why we can't do it this week and next week.

THE COURT: Mr. Harb, do you have any witnesses that were flying in that are not immediately available?

MR. HARB: Not for my case in chief. For rebuttal, obviously that's another issue. I do have victim impact witnesses here from out of the State.

THE COURT: Okay. Well, it's 9:00 now. You want to get back together in an hour or so and see what you want to do. You go talk to your witnesses; and like you say, if you want to start off with mitigation that's fine. If you want to start off with some aggravation, that's fine. I'll have it all transcribed anyway before I do anyway. It's all going to

be transcribed.

MR. FRASER: I think that's fine. If the State wants to get back in an hour we can -- I can't think of any witness to call at this stage because it's just a question of getting them here. That's all. And as we pointed out yesterday, the Court can hear -- in isolation a witness in two weeks.

THE COURT: I thought you had some witnesses that were here already.

MR. FRASER: We do. We can summon at least a day's worth of testimony on short notice, which is what we have, I guess.

THE COURT: Let's be sure. Mr. Brant, as you know, you pled guilty to these various offenses. And as you saw in the last two days the efforts that everybody went through to try to seat a jury of 12 people to hear evidence in aggravation that the State would present and evidence in mitigation that your lawyers would present.

And as I know, your lawyers have told you under the law, what would happen is those 12 jurors after they hear that evidence would get some instructions from he me. Then they'd go

back to deliberate then they would come back with some recommendation.

If it turns out that recommendation were life imprisonment, although the statute says that I would still have the legal right to impose a death sentence, as a practical matter under the current status of the law, as decided by the Supreme Court, it's highly unlikely that I could or would do that.

Let me just the ask the State, are you in a position to state whether if the jury recommended life, you would ask to the Court to impose notwithstanding?

MR. HARB: That's highly questionable, Judge, given the status of the law on that issue.

THE COURT: So as a practical matter, if that jury recommended life rather than death, I mean, it's highly, highly remote that this Court would or could impose a death sentence. And it's highly likely that if I were to do so, that that sentence would be reversed on appeal if I impose the death sentences.

But if we do impanel a jury, as you heard me say many times yesterday to the panel, if

they gave -- if they came back with a recommendation of death, then it would fall upon me to really reweigh and reconsider all the evidence; that is, the aggravation and mitigation.

And one of the factors I'd have to consider is their recommendation that is the jury's recommendation. And the law provides that I would have to give that great weight. And of course, I would. And then it would be up to me to impose either a sentences of death or sentences of life in prison without possibility of parole and under either of those scenarios if you were to receive a death sentences, obviously that would be directly appealable to the Supreme Court, even though you pled guilty.

Now, your lawyers I know told you, and the statute provides that at this stage of the proceedings, if you want it, I must impose a jury to hear all what I just described. But it's up to you and up to you alone. You have an absolute statutory right to weigh the -- a jury recommendation on this question and have the evidence presented to one person, myself.

And I would do that entire waiving -- I'm sorry -- weighing, and then I would be the one to decide; and there would be no jury recommendation one way or the other. Your lawyers tell me that last night your feeling was that you wanted a jury, but just this morning I think now you've told them you've changed your mind and you want to do it without a jury. Can you tell me in your own words what it is you want to do, how you want to proceed from this point forward?

THE DEFENDANT: I want your recommendation.

THE COURT: I'm sorry?

THE DEFENDANT: I just -- I don't want a jury.

THE COURT: You do not want a jury? You're absolutely certain of that?

THE DEFENDANT: Yes.

THE COURT: Mr. Fraser, is there anything else I should inquire of your client?

MR. FRASER: No, Your Honor.

THE COURT: Mr. Harb?

MR. HARB: No, Judge. This issue of the defendant possibly waiving a jury

recommendation, I think, has came up in the past. And I did preliminary research. I would ask the Court to consider an opinion that addresses a defendant's waiver of jury recommendation.

There's State v. Steven Hernandez found at 645 So.2nd 432. Its decision was decided by the Supreme Court, decided in 1994. I do have one copy. I will make --

THE COURT: What does the Supreme Court tell trial judges they must do?

MR. HARB: That obviously it says that we, the State, has no say in the matter. And the Court can, if the waiver is voluntary and intelligently made, the Court can accept that.

THE COURT: Well, I'll ask the State, is there anything else you want me to inquire of this defendant to assure that it's an intelligent, voluntary waiver? And what does Hernandez instruct?

MR. HARB: The typical language in any plea the concerns that we are at this point not trying to talk the defendant into anything or out of anything. Obviously, that last night what was represented to the Court and to the

State that he did not want to go nonjury and this morning he wants to go. Obviously he can change his mind that he wants to, just to make sure that about medication or lack of medication, being under the influence of anything, any promise or threats or anything like that, Judge.

THE COURT: Okay. Mr. Brant -- and I'll ask you and your counsel. Counsel, during the course of your preparation for this phase is there any reason or any evidence that might suggest that Mr. Brant currently suffers from any mental condition or anything like that?

MR. FRASER: I was interrupted but --

MR. HARB: I'm sorry.

MR. FRASER: The question is is there any -- do I have any to doubt that he's capable and competent to make this decision? No, I don't have any doubt that I can articulate.

THE COURT: He's been examined by, I presume, psychologists.

MR. FRASER: Dr. Maher, Dr. McClain, Dr. Wu. Although Dr. Wu and Dr. Wood basically dealt with the PET scan, Dr. Maher and Dr. McClain would have found him competent to

proceed. And I haven't seen any dramatic or even subtle change in his mental state all the times I visited him. So as far as I know, he's perfectly competent to make this decision, Judge.

THE COURT: Mr. Brant right now, sir, are you under medication? Are you being treated for anything -- with any medication at the jail?

THE DEFENDANT: No.

THE COURT: Nothing whatsoever?

THE DEFENDANT: Well, I'm taking Hydra (phonetic spelling), I think it is.

THE COURT: Taking what? I'm sorry.

THE DEFENDANT: I think it's Hydra.

THE COURT: What is that for?

THE DEFENDANT: I have a urinary infection. And I take Zantac for heartburn.

THE COURT: In your past history, have you been treated for mental illnesses by any psychologist or psychiatrist?

THE DEFENDANT: No, sir. Well, at the jail. Does that count?

THE COURT: Were you treated at the jail?

THE DEFENDANT: For depression,

antidepressants.

THE COURT: When was the last time you took antidepressants?

THE DEFENDANT: About two months ago I stopped taking them.

THE COURT: Any prior criminal history, Mr. Harb?

MR. HARB: Mr. Brant? No, sir. No convictions.

THE COURT: So you've never been adjudicated incompetent for any criminal matters because you have no prior criminal matters; is that correct?

THE DEFENDANT: Uh-huh.

THE COURT: And right now at this very moment are you under the influence of anything any medication, any alcohol, any drugs of any sort?

THE DEFENDANT: No, sir.

THE COURT: And you understand that you know this choice is yours and yours alone. It's certainly not up to your lawyers or up to me or up to the prosecutor. This choice of having a jury hear this evidence and then making recommendation of waiving a jury and

letting me hear it all and having me make my own decision, that's your decision, your decision alone. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: But you know, once you've waived it and once we begin, I don't think that there's any provision in the law which would allow you to say, I changed my mind; I want to have a jury here. So once we start, that's the way we're going to proceed. Do you understand that? Do you have any questions at all about anything from the prosecutor, from me, from your lawyers or anybody about anything?

THE DEFENDANT: No, sir.

THE COURT: You're absolutely certain this is what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And you understand that this is going to be a little bit out of focus, so-to-speak? In other words, we may hear, this afternoon or tomorrow, we may hear some aggravation -- evidence in aggravation? We may then hear some mitigation evidence and then later on hear more aggravation. So it will be a little bit interrupted.

But after all is said and done, what I'll do is I'll have the court reporter transcribe everything. We'll have an opportunity for the lawyers on both sides to make arguments and submit any legal memorandum that they wish and then it will be incumbent upon me to make a decision, which I'll do in writing and announce it sometime in the future. Any questions at all about the procedure?

THE DEFENDANT: No, sir.

THE COURT: Has anybody prior to today suggested to you that because of what their experiences might have been before this particular judge, Judge Fuente, that Judge Fuente is lenient or harsh or easy or hard in any respect? Are you making this decision because of your attitudes or feelings towards this judge as opposed to other judges?

THE DEFENDANT: I've seen you in the past three years.

THE COURT: I'm sorry?

THE DEFENDANT: I've seen you for the past three years, and you're pretty tough.

THE COURT: Do you think that that means I would not impose a death sentences?

THE DEFENDANT: No.

THE COURT: You understand that I could and I would if required by law? You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that I have before, I've done this before, I have imposed a death sentences before?

THE DEFENDANT: Yes.

THE COURT: Okay. I guess -- show, Santo, on the docket that we had a colloquy with the defendant and he has waived his right to trial by jury for penalty phase. And you gentleman want to get back together within the hour or --

MR. HARB: I do have a dispo before Judge Lopez that I need to report to as soon as possible, Judge. Couple hours will be sufficient time for the State.

THE COURT: 11:00?

MR. HARB: Yes, sir.

THE COURT: Then if we're going to do any evidence, we'll do it after lunch; is that all right?

MR. HARB: That will be fine.

THE COURT: We'll get back together here

at 11:00. Hold Mr. Brant here.

(COURT STOOD IN A BRIEF RECESS.)

THE COURT: Everybody here, Mr. Fraser any change in Mr. Brant's decision?

MR. FRASER: No, sir.

THE COURT: Okay. What have you gentleman decided to do?

MR. FRASER: We're reconvening so the State can give the Court some idea of whether it's able to go forward. I think that was the posture we left it in.

MR. HARB: The State is ready to go forward starting this afternoon if the Court wishes.

THE COURT: 1:00 good for you? 1:30?

MR. FRASER: Pardon me, 1:30?

THE COURT: 1:30 all right?

MR. HARB: That's fine.

MR. FRASER: I'm not going to be ready to put on any witnesses until tomorrow or Friday.

THE COURT: That's fine. We'll -- if you want we can just go through straight with the State's. And what I was suggesting is that if you had any witnesses that had to leave the city or something, we can do them out of order.

APPENDIX F

Supreme Court of Florida

FRIDAY, JULY 13, 2018

CASE NO.: SC18-1061
Lower Tribunal No(s).:
292004CF012631000AHC

CHARLES GROVER BRANT vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

The parties in the above case are directed to file briefs addressing why the lower court's order should not be affirmed based on this Court's precedent in *Mullens v. State*, 197 So. 3d 16 (Fla. 2016). Parties may include a brief statement to preserve arguments as to the merits of this Court's previously decided cases, as deemed necessary, without additional argument.

Appellant's initial brief, which is not to exceed twenty-five pages, is to be filed by August 2, 2018. Appellee's answer brief, which shall not exceed fifteen pages, shall be filed ten days after filing of appellant's initial brief. Appellant's reply brief, which shall not exceed ten pages, shall be filed five days after filing of Appellee's answer brief.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

cd
Served:

MARIE-LOUISE SAMUELS PARMER
CHRISTINA Z. PACHECO