

ATTACHMENT A

288 So.3d 1038
Supreme Court of Florida.

Jeremiah M. RODGERS, Appellant,

v.

STATE of Florida, Appellee.

No. SC19-241

November 21, 2019

Synopsis

Background: Following determinations affirming guilty plea to first-degree murder, 934 So. 2d 1207, waiver of penalty phase jury, 3 So. 3d 1127, and waiver of postconviction proceedings and counsel, 104 So. 3d 1087, prisoner under sentence of death filed successive postconviction motion. The Circuit Court, 1st Judicial Circuit, Santa Rosa County, John F. Simon, J., denied motion. Prisoner appealed.

[Holding:] The Supreme Court held that gender dysphoria diagnosis was not newly discovered evidence, warranting summary denial of successive motion for postconviction relief.

Affirmed.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

West Headnotes (4)

[1] **Criminal Law** ⇌ Interlocutory, Collateral, and Supplementary Proceedings and Questions

Criminal Law ⇌ Review De Novo

Criminal Law ⇌ Post-conviction relief

The Supreme Court reviews the circuit court's decision to summarily deny a successive motion for post-conviction relief de novo, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief. Fla. R. Crim. P. 3.851.

[2] **Criminal Law** ⇌ Time for proceedings

To be considered timely filed as newly discovered evidence, the successive postconviction relief motion is required to have been filed within one year of the date upon which the claim became discoverable through due diligence. Fla. R. Crim. P. 3.851.

[3] **Criminal Law** ⇌ Particular issues and cases

Court knew of symptoms attributed to gender dysphoria diagnosis at time prisoner appealed guilty plea to first-degree murder, waiver of penalty phase jury, and waiver of postconviction proceedings and counsel, including severe depression, self-mutilation, and reported suicidality, and thus diagnosis was not newly discovered evidence, warranting summary denial of successive motion for postconviction relief, although medical community subsequently assigned gender dysphoria name to the cause of known symptoms, where prisoner became aware of diagnosis after evaluation by a psychiatrist and symptoms were included in earlier postconviction motion. Fla. R. Crim. P. 3.851(d)(1)-(2).

[4] **Criminal Law** ⇌ Newly discovered evidence

To prevail on a newly discovered evidence claim on a motion for postconviction relief, two requirements must be met: (1) the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence; and (2) the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial. Fla. R. Crim. P. 3.851.

An Appeal from the Circuit Court in and for Santa Rosa County, John Franklin Simon, Jr., Judge - Case No. 571998CF000274XXAXMX

Attorneys and Law Firms

Terri L. Backhus, Chief, and Kimberly Sharkey, Attorney, Capital Habeas Unit, Office of the Federal Public Defender, Northern District of Florida, Tallahassee, Florida, for Appellant

Ashley Moody, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

*1039 [1] Jeremiah M. Rodgers, a prisoner under sentence of death, who now goes by the name Jenna Rodgers, appeals the circuit court's summary denial of a successive postconviction motion filed pursuant to Florida Rule of Criminal Procedure 3.851. We have jurisdiction. *See* art. V, § 3(b)(1). Fla. Const. Although Rodgers previously waived postconviction proceedings and counsel and this Court affirmed the validity of the waiver on appeal, Rodgers now argues that a diagnosis of gender dysphoria is newly discovered evidence that Rodgers was incompetent to plead guilty to first-degree murder, *see Rodgers v. State (Rodgers I)*, 934 So. 2d 1207 (Fla. 2006), to waive a penalty phase jury, *see Rodgers v. State (Rodgers II)*, 3 So. 3d 1127 (Fla. 2009), and to waive postconviction proceedings and counsel, *see Rodgers v. State (Rodgers III)*, No. SC11-1401, 104 So. 3d 1087, 2012 WL 5381782 (Fla. Oct. 17, 2012) (unpublished), thereby invalidating this Court's prior decision affirming the denial of *Hurst*¹ relief based on Rodgers' waiver of a penalty phase jury, *see Rodgers v. State (Rodgers IV)*, 242 So. 3d 276 (Fla. 2018). The circuit court found Rodgers' motion untimely and summarily denied it. We agree and affirm.²

[2] “[T]o be considered timely filed as newly discovered evidence, the successive rule 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence.” *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008); *see also* Fla. R. Crim. P. 3.851(d)(1)-(2). It was not. Rather, the record shows that Rodgers knew of the gender dysphoria diagnosis at some point between a February 26, 2016, evaluation by a psychiatrist and the filing of the January 11, 2017, successive postconviction motion at issue in *Rodgers IV*, in which Rodgers argued that gender dysphoria rendered Rodgers incompetent to enter prior waivers, including the

penalty phase jury waiver that we held, in *Rodgers IV*, precludes *Hurst* relief. Yet, Rodgers “d[id] not raise ... gender dysphoria as a claim of newly discovered evidence or ineffective assistance of counsel” in that proceeding. *Rodgers IV*, 242 So. 3d at 279 (Pariante, J., concurring in result). Thus, the December 4, 2018, successive postconviction motion at issue in this appeal—in which Rodgers alleged that gender dysphoria is newly discovered evidence of incompetency at the time of the guilty plea and waivers—is time-barred.

[3] [4] Moreover, even without the time bar, the summary denial was proper because the evidence at issue is not newly discovered. Generally, to prevail on a newly discovered evidence claim, two requirements must be met: “(1) the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence; and (2) the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial.” *Reed v. State*, 116 So. 3d 260, 264 (Fla. 2013) (citing *Jones v. State (Jones II)*, 709 So. 2d 512, 521 (Fla. 1998)). *1040 In Rodgers' case, the first prong of *Jones II* ends the inquiry.

As detailed in Justice Pariante's concurring in result opinion in *Rodgers IV*, the record conclusively establishes that Rodgers' symptoms that are now attributed to gender dysphoria (e.g., severe depression, self-mutilation, reported suicidality) were known to the courts that accepted and affirmed the validity of Rodgers' plea and waivers. *See Rodgers IV*, 242 So. 3d at 277 (Pariante, J., concurring in result) (“[B]oth the trial court and this Court were aware of Rodgers' long history of mental illness in determining Rodgers' competency to make the waivers and in reviewing Rodgers' waivers, respectively”); *see also id.* at 278-80 (detailing the “record indicating severe mental illness” in Rodgers' case). The medical community's subsequent assignment of a name to the cause of known symptoms is not newly discovered evidence, but even assuming that it could be, the record conclusively establishes that Rodgers failed to diligently pursue this claim. As explained above, Rodgers became aware of the gender dysphoria diagnosis at some point between February 2016 and January 2017 and alleged that gender dysphoria caused incompetency in a January 2017 successive postconviction motion, but waited until December 2018 to raise a newly discovered evidence claim predicated upon gender dysphoria.

This falls short of the due diligence that *Jones II* requires.

Accordingly, because Rodgers' motion is time-barred and, in any event, not based upon newly discovered evidence, we affirm the circuit court's summary denial. In so doing, we note that because Rodgers validly waived postconviction proceedings and counsel, future filings should not be made on Rodgers' behalf in the circuit court without first seeking leave from the circuit court and explaining how the appointment of counsel and the proposed filing are authorized in light of Rodgers' valid waiver.



It is so ordered.

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

All Citations

288 So.3d 1038, 44 Fla. L. Weekly S251

Footnotes

- 1  *Hurst v. Florida*, — U.S. —, 136 S. Ct. 616, 193 L.Ed.2d 504 (2016);  *Hurst v. State (Hurst)*, 202 So. 3d 40 (Fla. 2016).
- 2 "A successive rule 3.851 motion may be denied without an evidentiary hearing if the records of the case conclusively show that the movant is entitled to no relief. See Fla. R. Crim. P. 3.851(f)(5)(B). This Court reviews the circuit court's decision to summarily deny a successive rule 3.851 motion de novo, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief." *Walton v. State*, 3 So. 3d 1000, 1005 (Fla. 2009).

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

Case No: 1998-CF-0274

JEREMIAH MARTEL RODGERS,

Defendant.

**ORDER DENYING DEFENDANT'S
SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF**

2019 JAN 18 PM 4:05
SANTA ROSA COUNTY FL
FELONY FILED
DONALD C. SPENCER
CLERK OF COURT &
COMPTROLLER

THIS CAUSE is before this Court after a case management conference held on January 15, 2019, on Defendant's "Motion for Postconviction Relief from Death Sentence under *Hurst* Based on Newly Discovered Evidence" filed by and through counsel on December 4, 2018; the "State's Motion to Dismiss the Successive Postconviction Motion Reraising the Same Claim/Answer to Successive Motion" filed on December 21, 2018; and Defendant's "Response to the State's Motion to Dismiss" filed by and through counsel on January 4, 2019, all pursuant to Florida Rule of Criminal Procedure 3.851. Having carefully considered Defendant's motion, the State's answer, Defendant's reply, the arguments presented at the case management conference, the record, and applicable law, the Court finds that Defendant's motion should be denied without an evidentiary hearing.

Defendant waived the second penalty phase jury. Defendant also discharged postconviction counsel and waived postconviction proceedings. See Fla. R. Crim. P. 3.850(i).

This Court and the Florida Supreme Court found the waivers to be valid. *See Rodgers v. State (Rodgers II)*, 3 So. 3d 1127, 1132-33 (Fla. 2009); *Rodgers v. State (Rodgers III)*, 104 So. 3d 1087 (Fla. Oct. 17, 2012) (unpublished). Although Defendant is now claiming that the waivers were not valid, such claims are not properly before this Court because the instant motion was not timely filed. *See Fla. R. Crim. P. 3.851(d)(1) & (2)(A); Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008) (“To be considered timely filed as newly discovered evidence, the successive rule 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence.”). Defendant raised similar claims in the successive motion for postconviction relief filed in this Court on January 11, 2017, the denial of which was *per curiam* affirmed by the Florida Supreme Court. *See Rodgers v. State (Rodgers IV)*, 242 So. 3d 276 (Fla. 2018). Consequently, the waivers stand, and Defendant is not entitled to relief under *Hurst v. Florida*, 136 S. Ct. 616 (2016), or *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *See Rodgers IV*, 242 So. 3d at 276-77 (“We have consistently held that the Hurst decisions do not apply to defendants, like Rodgers, who waive a penalty phase jury.”).

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant’s “Motion for Postconviction Relief from Death Sentence under *Hurst* Based on Newly Discovered Evidence” is **DENIED**. Defendant has the right to appeal within 30 days of the rendition of this order.

DONE AND ORDERED in Chambers at the Santa Rosa County Courthouse, Milton, Florida.



eSigned by JOHN SIMON JR 01/18/2019 09:43:57 StaruPDO

JOHN F. SIMON, JR.
CIRCUIT JUDGE

JFS/cl

[CERTIFICATE OF SERVICE ON NEXT PAGE]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order Denying Defendant's Successive Motion for Postconviction Relief was furnished by e-Service (unless otherwise indicated) to:

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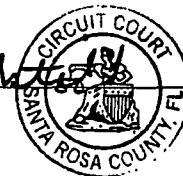
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this 22 day of Jan, 2019.

DONALD C. SPENCER, Clerk of Court

BY: 
Deputy Clerk



Supreme Court of Florida

TUESDAY, FEBRUARY 11, 2020

CASE NO.: SC19-241

Lower Tribunal No(s):

571998CF000274XXAXMX

JEREMIAH M. RODGERS

vs.

STATE OF FLORIDA

Appellant(s)

Appellee(s)

Appellant's Motion for Rehearing is hereby denied.

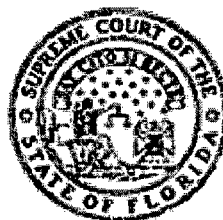
CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ.,
concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



kc

Served:

CHARMAINE M. MILLSAPS
KIMBERLY L. SHARKEY
TERRI LYNN BACKHUS
HON. DONALD C. SPENCER, CLERK
HON. JOHN FRANKLIN SIMON
CLIFTON DRAKE