

Capital Case

CASE No. 20-7615

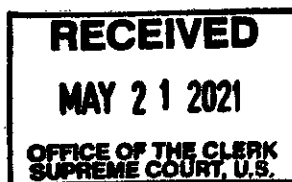
In the Supreme Court of the United States

Duane Eugene Owen, Petitioner

vs.

State of Florida, Respondent.

Reply brief to Petition for writ of Certiorari
to the Supreme Court of Florida



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Capital Case

Question Presented

Whether Petitioner was denied equal protection under the Fourteenth Amendment to the United States Constitution when the Florida Supreme Court declined to apply an established rule of law regarding a new penalty phase proceeding retroactively even though it had done so in similarly situated cases?

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REASONS FOR GRANTING THE WRIT

The issue before this Court is a simple one. When the Florida Supreme Court retroactivity applied Hurst v. State, 202 So.3d. 40 (Fla. 2016) to over 150 similarly situated cases pursuant to Mosley v. State, 209 So.3d. 1248 (Fla. 2016), but not to Petitioner, it violated the equal protection clause of the Fourteenth amendment.

The fact that the Florida Supreme Court receded from portions of Hurst in State v. Poole, 297 So.3d. 487 (Fla. 2020) is of no consequence. Petitioner preserved his conferred rights under the established rule of law set forth in both Hurst and Mosley in 2017 by filing a rule 3.851 motion in the circuit court. All members of the Mosley class received their conferred rights when they were granted a new penalty phase proceeding, yet, Petitioner has been deprived of this benefit. It is this disparity which Petitioner is asking to be corrected. ⁽¹⁾

During the pendency of Petitioner's appeal, the Florida Supreme Court considered whether it should recede from the retroactivity analysis employed in Asay v. State, 210 So.3d. 1 (Fla. 2016), Mosley v. State, 209 So.3d. 1248 (Fla. 2016) and James v. State, 615 So.2d. 668 (Fla. 1993). See Owen v. State, No. SC 18-810, April 24, 2019 order (directing parties to brief the issue). It became apparent on June 25, 2020 that the Florida Supreme Court abandoned its consideration to recede from the retroactivity analysis when it issued the decision in Petitioner's appeal. The opinion contained no retroactivity analysis and affirmed the circuit court's order

(1) All members of the Mosley class is guaranteed the right to a unanimous jury determination during any penalty phase proceeding under the new amendment to section 921.141, Florida Statute. See 2017-1 Fla. Laws § 1, at 1. Petitioner has been denied this Sixth Amendment right to a jury trial.

denying Hurst relief based on Poole.⁽²⁾ Owen v. State, 304 So.3d. 239 (Fla. 2020). As it stands, Mosley is still valid law.

Respondents have asserted that the cases upon which Petitioner relies upon to support the equal protection violation are of no moment as they are completely distinguishable. (Brief in Opposition, pg. 12). Petitioner will not recapitulate the context of those authorities, however, will point out the fact that its conspicuously noticable that Respondents have avoided addressing Dobbert v. Florida, 432 U.S. 282, 97 S.Ct. 2290, 53 L.Ed.2d.344 (1977).

After this Court's decision in Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d.346 (1972), the Florida Supreme Court resentenceed all prisoners under sentence of death pursuant to the old statute to life imprisonment. Dobbert argued before this Court that since his crimes were committed before the decision in Furman, that the imposition of the death sentence upon him pursuant to the new statute which was in effect at the time of his trial denied him equal protection of the laws.

~~Upon consideration, this Court held:~~

(2) Petitioner filed the rule 3.851 motion in the circuit court on January 6, 2017 and the judge denied the motion on May 9, 2018. The Florida Supreme Court then issued an opinion on June 25, 2020. All other members of the Mosley class received expedient resolution of their Hurst claims. Petitioner's claim was "processed too slowly by the courts" and this could implicate the equal protection clause since ... the state converted similarly situated claims into dissimilarly situated ones. Logan v. Zimmerman Brush Co., 455 U.S. 422, 442 (1982) (opinion of Justice Blackmun, with whom Justices Brennan, Marshall, and O'Connor join).

It can hardly be squared with the equal protection clause, the notion that a court's delay can deny Petitioner relief despite granting relief to 150 other class members.

" PETITIONER is simply not similarly situated to those whose SENTENCES were commuted. He was neither tried nor sentenced prior to FURMAN, as were they, and the only effect of the former statute was to provide sufficient warning of the gravity Florida attached to first-degree murder so as to make the application of this new statute to him consistent with the EX POST FACTO clause of the United States Constitution. Florida obviously had to draw the line at some point between those whose cases had progressed sufficiently far in the legal process as to be governed solely by the old statute, with the concomitant unconstitutionality of its death penalty provision, and those whose cases involved acts which could properly subject them to punishment under the new statute. There is nothing irrational about Florida's decision to relegate petitioner to the latter class, since the new statute was in effect at the time of his trial and sentence. "

Dobbert, 432 U.S. at 301.

Although the Dobbert decision related to revisions to Florida's capital sentencing statute, the reasoning is akin to PETITIONER'S case and should equally apply towards the established rule of law set forth in Hurst and Mosley since PETITIONER is " similarly situated to those who received a new penalty phase proceeding. " Goss v. Lopez, 419 U.S. 565, 576 (1975) (even state-created benefits cannot be withdrawn by whatever procedure the state chooses, " no matter how arbitrary. "). The

Florida Supreme Court obviously had to draw the line at some point in applying Hurst relief and did just that when they created two separate classes of death sentenced inmates, i.e., Asay and Mosley. All those similarly situated inmates under the Asay class were denied Hurst relief and all those similarly situated inmates under the Mosley class were granted Hurst relief... with the exception of Petitioner.⁽³⁾

The decision by the Florida Supreme Court irrationally excluded Petitioner from the Mosley class and the consequences has not only denied Petitioner of his Sixth and Fourteenth Amendment rights, but will result in his execution if this Court does not intervene.

⁽³⁾ The state of Florida argued in Lambrix v. Sec. D.O.C., 872 F.3d 1170 (11th Cir. 2017) that because Lambrix was a member of the Asay class, he could not establish that his equal protection right to Hurst relief was violated. Id. 872 F.3d at fn. 5. (Lambrix is being treated exactly the same as similarly situated convicted murderers). Ironically, the Respondents herein have argued that even though Petitioner is a member of the Mosley class, he is to be treated differently than those similarly situated.

The state of Florida cannot have it both ways.

Conclusion

The petition for writ of certiorari should be granted.

Respectfully Submitted,

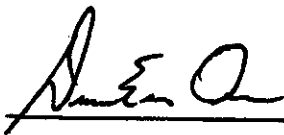

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Certificate of Service

I, Hereby certify that a true and correct copy of the foregoing reply brief has been turned over to prison officials for mailing by the U.S. Postal Service and furnished to:

Celia Terenzio, Senior Asst. Att. General
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this 11th day of May, 2021.

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