

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

GUILLERMO OCTAVIO ARBELAEZ,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

APPLICATION FOR A SIXTY-DAY EXTENSION OF TIME
IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

CAPITAL CASE

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner, GUILLERMO OCTAVIO ARBELAEZ, by and through undersigned counsel, and pursuant to 28 U.S.C. § 2101(d) and Rules 13.5 and 30.2 of this Court, respectfully requests an extension of time of sixty (60) days to file a petition for writ of certiorari to the Florida Supreme Court, to and including January 23, 2024.

Mr. Arbelaez is a death-sentenced inmate in the custody of the State of Florida. This Court has jurisdiction to review the decision of the Florida Supreme Court under 28 U.S.C. § 1257(a).

Mr. Arbelaez was convicted of one count of first-degree murder and one count

of kidnapping and sentenced to death in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. This case involves the decision of the Florida Supreme Court entered on May 25, 2023, affirming the denial of Mr. Arbelaez's successive motion for postconviction relief and state habeas petition, including his claims that his sentence of death is unconstitutional under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution in light of this Court's decisions in *Hall v. Florida*, 572 U.S. 701 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); and *Hurst v. Florida*, 577 U.S. 92 (2016); as well as the Florida Supreme Court's decisions in *Hall v. State*, 201 So. 3d 628 (Fla. 2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from by State v. Poole*, 297 So. 3d 487 (Fla. 2020). *See Arbelaez v. State*, 369 So. 3d 1141 (Fla. 2023) ("Attachment A"). The Florida Supreme Court denied Mr. Arbelaez's motion for rehearing on August 24, 2023 ("Attachment B").

Mr. Arbelaez's time to petition for certiorari in this Court regarding the Florida Supreme Court's decision expires on November 24, 2023. *See* Supreme Court Rule 13.3; 30.1. This application for a sixty-day extension is being filed more than ten days before that date. Undersigned counsel shows the following good cause in support of this request.

Mr. Arbelaez's counsel is an Assistant CCRC at the Office of the Capital Collateral Regional Counsel – South (CCRC-South), a Florida state agency charged with the responsibility of representing indigent death row inmates. As Assistant CCRC, undersigned counsel is responsible for the oversight of his own caseload at

CCRC-South, as well as oversight of his own independent client caseload outside of the office. In recent weeks, for example, counsel prepared for and conducted an oral argument on October 24, 2023, in the Eleventh Circuit Court of Appeals in a capital habeas corpus appeal; is working on the preparation of an amended motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851 in another capital case, due on November 13, 2023; is preparing for a week-long trial commencing November 13, 2023, in the United States District Court for the Northern District of Florida involving a §1983 lawsuit challenging provisions of Florida's Sex Offender Registry Act; and is also researching for a brief due in Florida's Second District Court of Appeal on December 13, 2023, in a non-capital appeal from the denial of postconviction relief pursuant to Fla. R. Crim. P. 3.850.

Given undersigned counsel's extensive duties as Assistant CCRC, as well as his own responsibilities in individual cases, counsel has not yet been able to prepare a proper petition for writ of certiorari in Mr. Arbelaez's case. If the sixty-day extension of time is provided, counsel's intention is to file a petition for certiorari on or before January 23, 2024.

Wherefore, Mr. Arbelaez respectfully requests that an order be entered extending his time to petition for certiorari to and including January 23, 2024.

Respectfully submitted,

/s/ Todd G. Scher

TODD G. SCHER

Assistant CCRC

Florida Bar No. 0899641

tscher@msn.com

**Counsel of Record*

COURTNEY M. HAMMER
Staff Attorney
Florida Bar No. 1011328

Office of the Capital Collateral Regional
Counsel – South
110 SE 6th Street, Suite 701
Fort Lauderdale, FL 33301
Tel: (954) 713-1284

COUNSEL FOR MR. ARBELAEZ

ATTACHMENT A

369 So.3d 1141 (Mem)
Supreme Court of Florida.

Guillermo Octavio ARBELAEZ, Appellant,

v.

STATE of Florida, Appellee.

Guillermo Octavio Arbelaez, Petitioner,

v.

Ricky D. Dixon, Etc., Respondent.

No. SC2015-1628, No. SC2018-0392

May 25, 2023

An Appeal from the Circuit Court in and for Miami-Dade County, [Diane Valentina Ward](#), Judge, Case No. 131988CF0055460001XX, And an Original Proceeding – Habeas Corpus

Attorneys and Law Firms

Suzanne Keffer, Capital Collateral Regional Counsel, and [Todd Scher](#), Assistant Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida, for Appellant/Petitioner

[Ashley Moody](#), Attorney General, Tallahassee, Florida, and [Leslie T. Campbell](#), Assistant Attorney General, West Palm Beach, Florida, for Appellee/Respondent

Opinion

PER CURIAM.

Guillermo Octavio Arbelaez, 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 Rules of Criminal Procedure 3.851](#) and [3.203](#). Arbelaez also petitions this Court for a writ of habeas corpus. We have jurisdiction. *See art. V, § 3(b)(1), (9), Fla. Const.*

In 1991, a jury convicted Arbelaez of first-degree murder and kidnapping. We affirmed Arbelaez's convictions and sentence of death on direct appeal. [Arbelaez v. State \(Arbelaez I\)](#), 626 So. 2d 169 (Fla. 1993). We upheld the denial of his initial motion for postconviction relief on all but one claim, which we remanded for an evidentiary hearing. [Arbelaez v. State \(Arbelaez II\)](#), 775 So. 2d 909 (Fla. 2000). We upheld the denial of his second postconviction motion after the

evidentiary hearing and denied his petition for a writ of habeas corpus. [Arbelaez v. State \(Arbelaez III\)](#), 898 So. 2d 25 (Fla. 2005).

In 2004, Arbelaez filed his third postconviction motion, in which he raised an intellectual disability claim under [Florida Rule of Criminal Procedure 3.203](#) and [Atkins v. Virginia](#), 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). We reversed the denial of his intellectual disability claim and remanded for an evidentiary hearing. [Arbelaez v. State \(Arbelaez IV\)](#), No. SC2005-1610 (Fla. order Nov. 14, 2006). We upheld the denial of his fourth postconviction motion after an evidentiary hearing. [Arbelaez v. State \(Arbelaez V\)](#), 72 So. 3d 745 (Fla. 2011). We also upheld the denial of his fifth postconviction motion. [Arbelaez v. State \(Arbelaez VI\)](#), 88 So. 3d 146 (Fla. 2012).

In May 2015, Arbelaez filed his sixth postconviction motion under [Florida Rules of Criminal Procedure 3.851](#) and [3.203](#).

Within his motion, Arbelaez sought relief based on [Hall v. Florida \(Hall\)](#), 572 U.S. 701, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014), and [Atkins](#). In June 2015, the circuit court issued an order summarily denying Arbelaez's intellectual disability claim in light of this Court's decision in [Arbelaez V](#). This appeal followed. While Arbelaez's postconviction case was pending in this Court, this Court permitted Arbelaez to file supplemental briefing in light of [Hurst v. Florida](#), 577 U.S. 92, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and [Hall v. State \(Hall v. State\)](#), 201 So. 3d 628 (Fla. 2016). Arbelaez subsequently filed a petition for a writ of habeas corpus in which he claimed that [*1142](#) chapter 2017-1, Laws of Florida, created a substantive right that must be retroactively applied under the United States and Florida Constitutions.

First, Arbelaez is not entitled to postconviction relief based on his intellectual disability claim. As this Court stated in [Phillips v. State](#), 299 So. 3d 1013, 1024 (Fla. 2020), [Hall](#) does not apply retroactively. Accordingly, we affirm the circuit court's order summarily denying Arbelaez's successive motion for postconviction relief.

Second, Arbelaez is not entitled to [Hurst](#) relief because the jury unanimously found that Arbelaez was guilty of kidnapping Julio Rivas. *See* [State v. Poole](#), 297 So. 3d 487, 508 (Fla. 2020) (“The jury in Poole's case unanimously found that, during the course of the first-degree murder of Noah Scott, Poole committed the crimes of attempted first-degree

murder of White, sexual battery of White, armed burglary, and armed robbery. Under this Court's longstanding precedent interpreting [Ring v. Arizona](#) [536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002)] and under a correct understanding of [Hurst v. Florida](#), this satisfied the requirement that a jury unanimously find a statutory aggravating circumstance beyond a reasonable doubt.”); [Arbelaez I](#), 626 So. 2d at 174 (“[T]he jury found Arbelaez guilty of kidnapping and the first-degree murder of Julio Rivas.”).

This Court has consistently rejected as without merit the claim that chapter 2017-1, Laws of Florida, created a substantive right that must be retroactively applied. *See, e.g., Thomas v. Jones*, SC2017-2268, 2018 WL 3198373, at *1 (Fla. June 29, 2018) (unpublished order); *Rodriguez v. Jones*, SC2018-0352, 2018 WL 1673423, at *1 (Fla. Apr. 6, 2018) (unpublished order); [Hannon v. State](#), 228 So. 3d 505, 513 (Fla. 2017); [Lambrix v. State](#), 227 So. 3d 112, 113 (Fla. 2017); [Asay v. State](#), 224 So. 3d 695, 703 (Fla. 2017). Arbelaez's arguments do not compel departing from our precedent. Consequently, we deny Arbelaez's petition for a writ of habeas corpus.

Any rehearing motion containing reargument will be stricken.

It is so ordered.

MUÑIZ, C.J., and CANADY, COURIEL, GROSSHANS, and

FRANCIS, JJ., concur.

LABARGA, J., dissents with an opinion.

SASSO, J., did not participate.

LABARGA, J., dissenting.

In light of my dissent in [Phillips v. State](#), 299 So. 3d 1013 (Fla. 2020) (receding from [Walls v. State](#), 213 So. 3d 340 (Fla. 2016), and holding that [Hall v. Florida](#), 572 U.S. 701, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014), does not apply retroactively), I dissent to the majority's decision to the extent that it affirms the summary denial of Arbelaez's successive motion for postconviction relief.

All Citations

369 So.3d 1141 (Mem), 48 Fla. L. Weekly S88

ATTACHMENT B

Supreme Court of Florida

THURSDAY, AUGUST 24, 2023

Guillermo Octavio Arbelaez,
Appellant(s)

v.

State of Florida,
Appellee(s)

SC2015-1628

Lower Tribunal No(s).:
131988CF0055460001XX

Guillermo Octavio Arbelaez,
Petitioner(s)

v.

Ricky D. Dixon, etc.
Respondent(s)

SC2018-0392

Lower Tribunal No(s).:
131988CF0055460001XX

The “Motion for Rehearing” filed by the Appellant/Petitioner is hereby denied.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS,
and FRANCIS, JJ., concur.

LABARGA, J., concurs with an opinion.

SASSO, J., did not participate.

LABARGA, J., concurring.

I continue to adhere to my dissent in *Arbelaez v. State*, 48 Fla. L. Weekly S88 (Fla. May 25, 2023), wherein I reaffirmed my dissenting view in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), and

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my belief that *Hall v. Florida*, 572 U.S. 701 (2014), applies retroactively.

However, I agree that Arbelaez has not established a basis for this Court to grant rehearing. Consequently, I have voted to deny rehearing.

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Test:

SC2015-1628 8/24/2023

SC2018-0392 8/24/2023

John A. Tomasino

Clerk, Supreme Court

SC2015-1628 8/24/2023

SC2018-0392 8/24/2023



SO

Served:

CAP APPEALS ATTORNEY GENERAL TLH

LESLIE T. CAMPBELL

TODD G. SCHER

MIAMI-DADE CLERK