

No. _____

IN THE
Supreme Court of the United States

ERNEST D. SUGGS,

Petitioner,

v.

STATE OF FLORIDA, ET AL.,

Respondents.

*On Petition for a Writ of Certiorari to the
Supreme Court of Florida*

PETITIONER'S APPENDIX

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INDEX TO APPENDIX

Exhibit 1 — Florida Supreme Court Opinion Below (Jan. 22, 2018)	1a
Exhibit 2 — Florida Supreme Court Order to Show Cause (Sep. 27, 2017))	5a
Exhibit 3 — Walton County Circuit Court Order Denying Relief (May 30, 2017).....	8a
Exhibit 4 — Petitioner/Appellant’s Response to Order to Show Cause (Oct. 17, 2017)	12a
Exhibit 5 — Respondent/State’s Response to Order to Show Cause (Oct. 31, 2017)	33a
Exhibit 6 — Petitioner/Appellant’s Reply in Support of Response to Order to Show Cause (Nov. 11, 2017)	52a
Exhibit 7 — Florida Death Penalty Appeals Decided in Light of <i>Hurst</i>	63a
(Source: Death Penalty Information Center)	
Exhibit 8 — List of Florida Supreme Court Opinions Summarily Denying Relief in Light of <i>Hitchcock</i> (Jan.-Feb. 2018)	73a

EXHIBIT 1

Florida Supreme Court Opinion Below (Jan. 22, 2018)

Supreme Court of Florida

No. SC17-1225

ERNEST D. SUGGS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC16-1066

ERNEST D. SUGGS,
Appellant,

vs.

JULIE L. JONES, etc.,
Appellee.

[January 22, 2018]

PER CURIAM.

We have for review Ernest D. Suggs' appeal of the circuit court's order denying Suggs' motion filed pursuant to Florida Rule of Criminal Procedure 3.851,

as well as Suggs' motion for rehearing on his petition for a writ of habeas corpus.

This Court has jurisdiction. See art. V, § 3(b)(1), (9), Fla. Const.

Suggs' motion and habeas petition 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 (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). This Court stayed Suggs' appeal and consideration of his motion for rehearing pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017). After this Court decided Hitchcock, Suggs responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in both cases.

After reviewing Suggs' response to the order to show cause, as well as the State's arguments in reply, we conclude that Suggs is not entitled to relief. Suggs was sentenced to death following a jury's recommendation for death by a vote of seven to five. Suggs v. State, 644 So. 2d 64, 66 (Fla. 1994). His sentence of death became final in 1995. Suggs v. Florida, 514 U.S. 1083 (1995). Thus, Hurst does not apply retroactively to Suggs' sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Suggs' motion and deny Suggs' motion for rehearing on his petition for a writ of habeas corpus.

The Court having carefully considered all arguments raised by Suggs, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.
PARIENTE, J., concurs in result with an opinion.
LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

An Appeal from the Circuit Court in and for Walton County,
Kelvin Clyde Wells, Judge - Case No. 661990CF000338CFAXMX
And an Original Proceeding – Habeas Corpus

Robert S. Friedman, Capital Collateral Regional Counsel, Dawn B. Macready, and Stacy Biggart, Assistant Capital Collateral Regional Counsel, Northern Region, Tallahassee, Florida,

for Appellant/Petitioner

Pamela Jo Bondi, Attorney General, and Lisa Hopkins, Assistant Attorney General, Tallahassee, Florida,

for Appellee/Respondent

EXHIBIT 2

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 27, 2017

CASE NOS.: SC17-1225 & SC16-1066

Lower Tribunal No(s):
661990CF000338CFAXMX

ERNEST D. SUGGS

vs. STATE OF FLORIDA

ERNEST D. SUGGS

vs. JULIE L. JONES, ETC.

Appellant/Petitioner

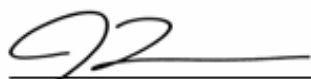
Appellee/Respondent

Appellant/Petitioner shall show cause on or before Tuesday, October 17, 2017, why the trial court's order should not be affirmed and rehearing should not be denied in light of this Court's decision Hitchcock v. State, SC17-445. The response shall be limited to no more than 20 pages. Appellee/Respondent may file a reply on or before Wednesday, November 1, 2017, limited to no more than 15 pages. Appellant/Petitioner may file a reply to the Appellee/Respondent's reply on or before Monday, November 13, 2017, limited to no more than 10 pages.

Motions for extensions of time will not be considered unless due to a medical emergency.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



jat

Served:

CASE NO.: SC17-1225

Page Two

LISA HOPKINS

STACY BIGGART

DAWN B. MACREADY

EXHIBIT 3

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA**

STATE OF FLORIDA,

v.

CASE NO.: 1990-CF-000338

ERNEST D. SUGGS,

Defendant.

**ORDER AFTER CASE MANAGEMENT CONFERENCE
and
ORDER DENYING THE DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF
IN LIGHT OF *HURST v. FLORIDA***

THIS CAUSE comes before the court after the filing of the Defendant's Motion for Post-Conviction Relief in Light of *Hurst v. Florida*, electronically filed by counsel on January 11, 2017; and the State's Response and Notice of Florida Supreme Court's Order, electronically filed by counsel on March 17, 2017; pursuant to rule 3.851, Florida Rules of Criminal Procedure. A case management conference was held on April 20, 2017. Present before the court were Ms. Dawn Macready, Capital Collateral Regional Counsel—North; and Ms. Stacy Biggart, Capital Collateral Regional Counsel—North. Mr. Joseph Schiller, Assistant State Attorney, First Judicial Circuit, Escambia County, Florida; and Ms. Berdene Beckles, Assistant Attorney General, Office of the Attorney General; attended by telephone.

*Order After Case Management Conference and
Order Denying the Defendant's Motion for Post-Conviction Relief in Light of Hurst v. Florida
State of Florida v. Ernest D. Suggs 1990-CF-000338
Page 1 of 3*

After the case management conference, the court determined that an evidentiary hearing was not necessary regarding the defendant's successive motion. In the instant case, the defendant's death sentence was final before Ring v. Arizona was decided. As a result, the legal authority is clear that Hurst v. Florida does not apply retroactively to the instant defendant. Furthermore, the Supreme Court of Florida denied the defendant's petition for a writ of habeas corpus based on Hurst v. Florida on March 17, 2017. Therefore, considering the court is required to follow existing, clear legal authority, the instant motion is denied. Additionally, the defendant's request for a new penalty phase is denied.

Accordingly, it is hereby **ORDERED** that:

1. The Defendant's Motion for Post-Conviction Relief in Light of *Hurst v. Florida*, electronically filed by counsel on January 11, 2017, is **DENIED**.
2. The defendant has thirty days to file his notice of appeal.

DONE AND ORDERED in Chambers in DeFuniak Springs, Walton County, Florida.



eSigned by KELVIN WELLS in 01 JUDGE WELLS INBOX FOLDER
on 05/30/2017 13:58:32 W0qYFI6H

KELVIN C. WELLS
CIRCUIT JUDGE

KCW/elm

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*Order After Case Management Conference and
Order Denying the Defendant's Motion for Post-Conviction Relief in Light of Hurst v. Florida
State of Florida v. Ernest D. Suggs 1990-CF-000338
Page 2 of 3*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order has been furnished by regular U.S. mail (unless otherwise indicated) to:

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by electronic delivery to: Dawn.Macready@ccrc-north.org

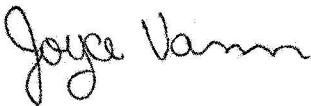
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ALEX ALFORD
Clerk of Court

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on 05/30/2017 16:19:27 xxJ3SzMU

*Order After Case Management Conference and
Order Denying the Defendant's Motion for Post-Conviction Relief in Light of Hurst v. Florida
State of Florida v. Ernest D. Suggs 1990-CF-000338
Page 3 of 3*

EXHIBIT 4

IN THE SUPREME COURT OF FLORIDA

ERNEST D. SUGGS,

Appellant/Petitioner,
v.

CASE NOS.: SC17-1225;
SC16-1066

STATE OF FLORIDA and
JULIE L. JONES, ETC.

Appellee/Respondent.

_____/

RESPONSE TO ORDER TO SHOW CAUSE

The Appellant/Petitioner, ERNEST D. SUGGS, by and through undersigned counsel, hereby responds to this Court's Order to Show Cause why the trial court's order should not be affirmed and rehearing should not be denied in light of this Court's decision in Hitchcock v. State, SC17-445. In support thereof, Mr. Suggs states:

INTRODUCTION

Mr. Suggs' death sentence was imposed pursuant to a capital sentencing scheme that has since been ruled unconstitutional by the United States Supreme Court in Hurst v. Florida, 136 S.Ct. 616 (2016), and this Court in Hurst v. State, 202 So.3d 40 (Fla. 2016). Mr. Suggs' sentence became "final" in 1995, prior to the United States Supreme Court decisions in Apprendi v. New Jersey, 530 U.S. 466 (2000) and Ring v. Arizona, 536 U.S. 584 (2002). The issue in this case is whether this Court's approach to limited retroactivity to deny Mr. Suggs Hurst relief on the ground that his sentence became final prior to the 2002 decision in Ring is

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constitutional in light of Hurst v. Florida, Hurst v. State, Florida law, and federal law.

This Court has already granted Hurst relief as a matter of state law in dozens of collateral-review cases where the defendant's sentence became final after Ring. But this Court has also created a state-law cutoff at the date Ring was decided – June 24, 2002 – to deny relief in dozens of other collateral-review cases. The Ring-based cutoff is unconstitutional and should not be applied to Mr. Suggs. Denying Mr. Suggs Hurst relief because his sentence became final after 1995, rather than some date between 2002 and 2016, would violate the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Mr. Suggs is entitled to Hurst retroactivity as a matter of state and federal law.

Relief should not be denied here in light of Hitchcock. Mr. Suggs notes that there is still a petition for writ of certiorari still pending in Hitchcock v. Florida, (No. 17-6180). Moreover, the issues raised in Mr. Suggs' appeal and his petition for habeas relief were not addressed in this Court's decision in Hitchcock v. State.

REQUEST FOR ORAL ARGUMENT

This case presents an important issue of first impression: whether federal and state law requires this Court to extend Hurst retroactivity to death sentences that became final before Ring, rather than cabining Hurst relief to post-Ring death sentences. Mr. Suggs respectfully requests oral argument on this and related issues pursuant to Fla.R.App.P. 9.320. Mr. Suggs also requests that the Court permit full review in this case in accord with the normal, untruncated habeas and briefing rules.

Depriving Mr. Suggs the opportunity for full merits review would constitute an arbitrary deprivation of the vested right to habeas corpus review under Article I, § 13, and Article V, § 3(b)(9), of the Florida Constitution. See Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982); Hicks v. Oklahoma, 447 U.S. 343 (1980). Due process does not permit Mr. Suggs to be foreclosed by the decision rendered in Hitchcock v. State, Case No. SC17-445 (Fla. 2016). Mr. Suggs deserves an individualized appellate review of his sentence.

ARGUMENT

I. Due Process does not permit Mr. Suggs to be foreclosed by the decision rendered in Hitchcock v. State.

Mr. Suggs is exercising a substantive right to appeal the denial of his successive Rule 3.851 motion See Fla. Stat. § 924.066 (2016); Fla.R.App.Pro. 9.140(b)(1)(D). Because he has been provided this substantive right, Mr. Suggs' right to appeal is protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Evitts v. Lucy, 469 U.S. 387, 393 (1985) ("if a State has created appellate courts as 'an integral part of the ... system for finally adjudicating the guilt or innocence of a defendant,' Griffin v. Illinois, 351 U.S. at 18, 76 S.Ct., at 590, the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.").

In a capital case in which a death sentence has been imposed, courts are required to go further when considering challenges to the death sentence. The Eighth Amendment requires more due to a special need for reliability. Johnson v. Mississippi, 486 U.S. 578, 584 (1988). The process by which the Court has directed

Mr. Suggs to proceed in his appeal, indicates its intention on binding Mr. Suggs to the outcome rendered in Hitchcock's appeal, regardless of the fact that the record on appeal in each case is distinct and separate from one another. The fact that this Court has *sua sponte* issued identical orders, in numerous other cases, employing the same truncated procedure it does here, reflects baseless prejudgment of the appeals and their scope. Mr. Suggs deserves an individualized appellate process.

“The death penalty is the gravest sentence our society may impose. Persons facing the most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.” Hall v. Florida, 134 S.Ct. 1986, 2001 (2014). Yet, Mr. Suggs is being denied that opportunity by this Court's attempt to confine him to the outcome in Hitchcock without first providing a fair opportunity of his own to demonstrate how the record and facts in his particular case prohibit his execution. Moreover, in denying relief in Hitchcock, this Court relied upon Asay v. State for the determination that Hurst was not retroactive to cases final before Ring v. Arizona. Hitchcock v. State, Case No. SC17-445 at *2-3.

This Court did so despite the fact that the opinion in Asay was not premised upon, nor did it even address, the holding in Hurst v. State, 202 So.3d 40 (Fla. 2016). Furthermore, Asay was not given the opportunity to argue that he should be given the benefit of Hurst v. Florida by way of fundamental fairness, as recognized in Mosley v. State, 209 So.3d 1248 (Fla. 2016). It is in that regard that this Court must acknowledge that the holding in Asay, and this Court's reliance upon that holding in Hitchcock, does not foreclose the availability of Hurst relief to Mr. Suggs.

II. Mr. Suggs' death sentence violates Hurst v. Florida and Hurst v. State, and the error is not harmless.

Mr. Suggs was sentenced to death pursuant to an unconstitutional Florida capital sentencing scheme. In Hurst v. Florida, the United States Supreme Court held that Florida's scheme violated the Sixth Amendment because it required the judge, not the jury, to make the findings of fact required to impose the death penalty under Florida law. 136 S.Ct. at 620-22. On remand, this Court applied the holding of Hurst v. Florida, and further held that the Eighth Amendment requires unanimous jury fact-finding as to each of the required elements, and also a unanimous recommendation by the jury to impose the death penalty. Hurst v. State, 202 So.3d at 53-59. In Mosley v. State, this Court noted that the unanimity requirement in Hurst v. State carried with it "heightened protection" for a capital defendant. Id., 209 So. 3d at 1278. This Court stated in Mosley that Hurst v. State had "emphasized the critical importance of a unanimous verdict." Id.

Mr. Suggs' jury recommended the death penalty by a vote of 7 to 5. This Court's precedent makes clear that Hurst errors are not harmless where the defendant's pre-Hurst jury recommended death by a non-unanimous vote. Dubose v. State, 210 So.3d 641, 657 (Fla. 2017)("[I]n cases where the jury makes a non-unanimous recommendation of death, the Hurst error is not harmless."). This Court has declined to apply the harmless error doctrine in every case where the pre-Hurst jury's recommendation was not unanimous.¹

¹ See, e.g., Bailey v. Jones, No. SC17-433, 2017 WL 2874121, at *1 (Fla. July 6, 2017)(11-2 jury vote); Hertz v. Jones, 218 So. 3d 428, 431-32 (Fla. 2017)(10-2 jury vote); Hernandez v. Jones, 217 So.3d 1032, 1033 (Fla. 2017) (11-1 jury vote); Card v. Jones, 219 So.3d 47, 48 (Fla. 2017)(11-1 jury vote); McMillian v. State, 214 So.3d 1274, 1289 (Fla. 2017)(10-2 jury vote).

III. This Court’s “retroactivity cutoff” at Ring is unconstitutional and should not be applied to Mr. Suggs.

Beginning with Mosley v. State, 209 So. 3d 1248 (Fla. 2016), this Court has applied Hurst retroactively as a matter of state law and granted relief in dozens of collateral-review cases where the defendant’s sentence became final after Ring. But the Court has created a state-law cutoff at the date Ring was decided—June 24, 2002—to deny relief in dozens of other collateral-review cases. The Court recently reaffirmed its retroactivity cutoff in Hitchcock v. State, No. SC17-445, 2017 WL 3431500 (Fla. Aug. 10, 2017). This Court’s arbitrary cutoff violates the Florida Constitution and the Eighth and Fourteenth Amendments of the United States Constitution.

Denying Hurst relief to Mr. Suggs because his death sentence became final in 1995, while affording retroactivity to similarly-situated defendants who were sentenced (or resentenced) between 2002 and 2016, would violate the Florida Constitution under Hurst v. State, the Eighth and Fourteenth Amendments’ prohibition against arbitrary and capricious imposition of the death penalty, as well as the Fourteenth Amendment’s guarantee of equal protection and due process.

A. Mr. Suggs is entitled to retroactive application of Hurst on the basis of fundamental fairness.

Even if this Court were to maintain its unconstitutional retroactivity “cutoff” at Ring, individuals who preserved the substance of the Hurst decisions before Hurst, such as Mr. Suggs, should receive the retroactive benefit of Hurst under this Court’s “fundamental fairness” doctrine, which the Court has previously applied in other contexts, see, e.g., James v. State, 615 So. 2d 668, 669 (Fla. 1993), and which the

Court has applied once in the Hurst context, see Mosley, 209 So. 3d at 1274, but inexplicably never addressed since. Justice Lewis recently endorsed this “preservation” approach in Hitchcock. See 2017 WL 3431500, at *2 (Lewis, J., concurring) (stating that the Court should “simply entertain Hurst claims for those defendants who properly presented and preserved the substance of the issue, even before Ring arrived.”).

In Mosley, this Court focused its fundamental fairness analysis on whether it would be unfair to bar Mr. Mosley from seeking Hurst relief, regardless of when his sentence became final, by virtue of the fact that he had previously attempted to challenge Florida’s unconstitutional sentencing scheme and was “rejected at every turn” under the Florida Supreme Court’s flawed pre-Hurst law. Id. at 1275. In assessing fundamental fairness, this Court explained that an important inquiry is whether the defendant unsuccessfully attempted to raise a challenge to Florida’s capital sentencing scheme before Hurst v. Florida and Hurst v. State were decided. See id. at 1275. If Mosley had raised such a challenge, this Court reasoned, it would be fundamentally unfair to prohibit him from seeking post-conviction relief under Hurst, given that he had accurately anticipated the fatal defects in Florida’s capital sentencing scheme even before they were recognized in the Hurst decisions. See id. This Court emphasized that ensuring fundamental fairness in assessing retroactivity outweighed any State’s interest in finality of death sentences. Id. (“In this instance...the interests of finality must yield to fundamental fairness.”).

Here, as in Mosley, the Hurst decisions are retroactive under the fundamental fairness doctrine. Although Mr. Suggs’ case was pre-Ring, he attempted to challenge

Florida’s unconstitutional capital sentencing statute before both the Ring and Hurst decisions. Before trial, Mr. Suggs filed pretrial motions raising Ring and Hurst-like challenges to the operation of Florida’s “advisory” capital-sentencing jury system under Caldwell v. Mississippi, 472 U.S. 320 (1985), and also challenged Florida’s lack of a unanimous verdict on all the elements required to impose death as unconstitutional. (R. 90-104). In his direct appeal brief, Mr. Suggs challenged the penalty-phase jury instructions based on the reasonable doubt standard. In his postconviction proceedings, Mr. Suggs continued to raise such challenges to his death sentence. In his Second Amended Motion to Vacate Convictions and Sentences, which was filed pre-Ring, he raised state and federal constitutional challenges to Florida’s capital sentencing scheme under Espinosa v. Florida, 505 U.S. 1079 (1993). Following the United States Supreme Court’s decision in Ring, Mr. Suggs filed a Petition for Writ of Habeas Corpus in this Court based upon that decision. He was denied at every turn. Under the rationale of Mosley, these circumstances provide a sufficient basis to apply the Hurst decisions retroactively to Mr. Suggs, regardless of the fact that his sentence became final before the issuance of Ring. See Mosley, 209 So. 3d at 1276 n.-13.

B. This Court’s retroactivity cutoff violates the Eighth and Fourteenth Amendments’ prohibition against arbitrary and capricious imposition of the death penalty.

This Court’s retroactivity cutoff violates the Eighth and Fourteenth Amendments’ prohibition against arbitrary and capricious imposition of the death penalty. The death penalty cannot “be imposed under sentencing procedures that create[] a substantial risk that it would be inflicted in an arbitrary or capricious

manner.” Gregg v. Georgia, 428 U.S. 153, 188 (1976); see also Furman v. Georgia, 408 U.S. 238, 310 (1972) (“[T]he Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.”) (Stewart, J., concurring). In other words, the death penalty cannot be imposed in a way that is comparable to being “struck by lightning.” Furman, 408 U.S. at 308.

Experience has already shown the arbitrary results inherent in this Court’s application of the Ring-based retroactivity cutoff. The date of a particular death sentence’s finality on direct appeal in relation to the June 24, 2002 decision in Ring—and thus whether this Court has held Hurst retroactive based on its bright-line cutoff—has at times depended on whether there were delays in transmitting the record on appeal to this Court for the direct appeal; whether direct appeal counsel sought extensions of time to file a brief; whether a case overlapped with this Court’s summer recess; how long the assigned Justice of this Court took to submit the opinion for release; whether an extension was sought for a rehearing motion and whether such a motion was filed; whether there was a scrivener’s error necessitating issuance of a corrected opinion; whether counsel chose to file a petition for a writ of certiorari in the United States Supreme Court or sought an extension to file such a petition; and how long a certiorari petition remained pending in the Supreme Court.

In one striking example, this Court affirmed Gary Bowles’s and James Card’s unrelated death sentences in separate opinions that were issued on the same day, October 11, 2001. Bowles v. State, 804 So. 2d 1173 (Fla. 2001); Card v. State, 803 So. 2d 613 (Fla. 2001). Both inmates petitioned for a writ of certiorari in the United

States Supreme Court. Mr. Card’s sentence became final four (4) days after Ring was decided—on June 28, 2002—when his certiorari petition was denied. Card v. Florida, 536 U.S. 963 (2002). Mr. Bowles’s sentence, however, became final seven (7) days before Ring was decided—on June 17, 2002—when his certiorari petition was denied. Bowles v. Florida, 536 U.S. 930 (2002). This Court recently granted Hurst relief to Mr. Card, ruling that Hurst was retroactive because his sentence became final after the Ring cutoff. See Card, 219 So. 3d at 47. Mr. Bowles, on the other hand, whose case was decided on direct appeal on the same day as Mr. Card’s, and who filed his certiorari petition in the Supreme Court after Mr. Card, now finds himself on the pre-Ring side of this Court’s current retroactivity cutoff.

Other arbitrary factors affecting whether a defendant receives Hurst relief under this Court’s date-of-Ring-based retroactivity approach include whether a resentencing was granted. Under the Court’s current approach, “older” cases dating back to the 1980s with a post-Ring resentencing are subject to Hurst, while other less “old” cases are not. See, e.g., Johnson v. State, 205 So. 3d 1285, 1285 (granting Hurst relief to a defendant whose crime occurred in 1981 but was granted relief on a third successive post-conviction motion in 2010, years after the Ring decision); Card, 219 So. 3d at 47 (granting Hurst relief to a defendant whose crime occurred in 1981 but was afforded relief on a second successive post-conviction motion in 2002—just four days after Ring was decided); cf. Calloway v. State, 210 So. 3d 1160 (Fla. 2017) (granting Hurst relief in a case where the crime occurred in the late 1990s, but interlocutory appeals resulted in a ten-year delay before the trial). Under this Court’s approach, a defendant who was originally sentenced to death before Mr.

Suggs, but who was later resentenced to death after Ring, would receive Hurst relief and Mr. Suggs would not.

Moreover, under the Court’s current rule, some litigants whose Ring claims were wrongly rejected on the merits during the 2002-2016 period will be denied the benefit of Hurst because the Court addressed the issue in a post-conviction rather than a direct appeal posture. See e.g., Miller v. State, 926 So. 2d 1243, 1259 (Fla. 2006); Nixon v. State, 932 So. 2d 1009, 1024 (Fla. 2006); Bates v. State, 3 So. 3d 1091, 1106 n.14 (Fla. 2009); Bradley v. State, 33 So. 3d 664, 670 n.6 (Fla. 2010).

Making Hurst retroactive to only post-Ring sentences also unfairly denies Hurst access to defendants who were sentenced between Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring. The fundamental unfairness of that result is stark given that the Supreme Court made clear in Ring that its decision flowed directly from Apprendi. See Ring, 536 U.S. at 588-89. And in Hurst v. Florida, the Court repeatedly stated that Florida’s scheme was incompatible with “Apprendi’s rule,” of which Ring was an application. 136 S. Ct. at 621. This Court itself has acknowledged that Ring was an application of Apprendi. See Mosley, 209 So. 3d at 1279-80. This Court’s drawing of its retroactivity cutoff at Ring instead of Apprendi represents the sort of capriciousness that is inconsistent with the Eighth Amendment.

C. This Court’s retroactivity cutoff violates the Fourteenth Amendment’s guarantee of equal protection and due process.

As an equal protection matter, the cutoff treats death-sentenced prisoners in the same posture—on collateral review—differently without “some ground of difference that rationally explains the different treatment.” Eisenstadt v. Baird, 405

U.S. 438, 447 (1972). When two classes are created to receive different treatment by a state actor like this Court, the question is whether there is a rational basis for the different treatment. Id.; see also McLaughlin v. Florida, 379 U.S. 184, 191 (1964). The Fourteenth Amendment requires that distinctions in state criminal laws that impinge upon fundamental rights be strictly scrutinized. See, e.g., Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). Capital defendants have a fundamental right to a reliable determination of their sentences. See Lockett v. Ohio, 438 U.S. 586, 604 (1978). When a state draws a line between defendants who will receive the benefit of the rules designed to enhance the quality of decision-making by a penalty-phase jury and those who will not, the state’s justification for that line must satisfy strict scrutiny. Far from meeting strict scrutiny, this Court’s Hurst retroactivity cutoff lacks even a rational connection to any legitimate state interest. See Dep’t of Agric. v. Moreno, 413 U.S. 528, 533 (1973).

As a due process matter, denying Hurst retroactivity to “pre-Ring” defendants like Mr. Suggs violates the Fourteenth Amendment because once a state requires certain sentencing procedures, it creates Fourteenth Amendment life and liberty interests in those procedures. See, e.g., Evitts v. Lucey, 469 U.S. 387, 393 (1985) (due process interest in state-created right to direct appeal); Hicks, 447 U.S. at 346 (liberty interest in state-created sentencing procedures); Ford v. Wainwright, 477 U.S. 399, 427-31 (1986) (O’Connor, J., concurring) (liberty interest in meaningful state competency proceedings); Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272, 288-89 (1998) (O’Connor, J., with Souter, Ginsburg, & Breyer, JJ., concurring) (life interest in state-created right to capital clemency proceedings).

Although the right to the particular procedure is established by state law, the violation of the life and liberty interest it creates is governed by federal constitutional law. See Hicks, 447 U.S. at 347; Ford, 477 U.S. at 399, 428-29; Evitts, 469 U.S. at 393 (state procedures employed “as ‘an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant’” must comport with due process). Defendants have “a substantial and legitimate expectation that [they] will be deprived of [their] liberty only to the extent determined by the jury in the exercise of its discretion . . . and that liberty interest is one that the Fourteenth Amendment preserves against arbitrary deprivation by the State.” Hicks, 447 U.S. at 346. Courts have found in a variety of contexts that state-created death penalty procedures vest in a capital defendant life and liberty interests that are protected by due process. See e.g., Ohio Adult Parole Auth., 523 U.S. at 272; Ford, 477 U.S. at 427-31. In Hicks, the Supreme Court held that the trial court’s failure to instruct the jury that it had the option to impose an alternative sentence violated the state-created liberty interest (and federal due process) in having the jury select his sentence from the full range of alternatives available under state law. 447 U.S. at 343.

IV. Because the Hurst decisions announced substantive constitutional rules, the Supremacy Clause of the United States Constitution requires state courts to apply those rules retroactively to all cases on collateral review.

A. The Supremacy Clause requires state courts to apply substantive constitutional rules retroactively to all cases on collateral review.

In Montgomery v. Louisiana, 136 S. Ct. 718, 731-32 (2016), the United States Supreme Court held that the Supremacy Clause of the Constitution requires state courts to apply “substantive” constitutional rules retroactively as a matter of federal

constitutional law, notwithstanding any separate state-law retroactivity analysis. In Montgomery, a Louisiana state prisoner filed a claim in state court seeking retroactive application of the rule announced in Miller v. Alabama, 567 U.S. 460 (2012) (holding that imposition of mandatory sentences of life without parole on juveniles violates the Eighth Amendment). The state court denied the prisoner’s claim on the ground that Miller was not retroactive as a matter of state retroactivity law. Montgomery, 136 S. Ct. at 727. The United States Supreme Court reversed, holding that because the Miller rule was substantive as a matter of federal law, the state court was obligated to apply it retroactively. See id. at 732-34.

Montgomery clarified that the Supremacy Clause requires state courts to apply substantive rules retroactively, notwithstanding state-law analysis. Montgomery, 136 S. Ct. at 728-29 (“[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.”) (emphasis added). Thus, Montgomery held, “[w]here state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.” Id. at 731-32.

Importantly for purposes of Hurst retroactivity analysis, the Supreme Court found the Miller rule substantive in Montgomery even though the rule had “a procedural component.” Id. at 734. Miller did “not categorically bar a penalty for a class of offenders or type of crime—as, for example, [the Court] did in Roper or Graham.” Miller, 567 U.S. at 483. Instead, “it mandate[d] only that a sentence

follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” Id. Despite Miller’s procedural mandates, the Court in Montgomery warned against “conflat[ing] a procedural requirement necessary to implement a substantive guarantee with a rule that ‘regulate[s] only the manner of determining the defendant’s culpability.’” Montgomery, 136 S. Ct. at 734 (quoting Schriro v. Summerlin, 542 U.S. 348, 353 (2004)). Instead, the Court explained, “[t]here are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within a category of persons whom the law may no longer punish,” id. at 735, and that the necessary procedures do not “transform substantive rules into procedural ones,” id. Miller “bar[red] life without parole For that reason, Miller is no less substantive than are Roper and Graham.” Id. at 734.

B. The Hurst decisions announced substantive rules that must be applied retroactively to Mr. Suggs under the Supremacy Clause.

At least two substantive rules were established by Hurst v. Florida and Hurst v. State. First, a Sixth Amendment rule was established requiring that a jury find as fact beyond a reasonable doubt: (1) each aggravating circumstance; (2) that those particular aggravating circumstances together are “sufficient” to justify imposition of the death penalty; and (3) that those particular aggravating circumstances together outweigh the mitigation in the case. Hurst v. State, 202 So. 3d at 53-59. Such findings are manifestly substantive. See Montgomery, 136 S. Ct. at 734 (holding that the decision whether a juvenile is a person “whose crimes reflect the transient immaturity of youth” is a substantive, not procedural, rule). As in Montgomery,

these requirements amounted to an “instance[] in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within a category of persons whom the law may no longer punish.” Id. at 735.

Second, an Eighth Amendment rule was established that requires those three beyond-a-reasonable-doubt findings to be made unanimously by the jury. The substantive nature of the unanimity rule is apparent from this Court’s explanation in Hurst v. State that unanimity (1) is necessary to ensure compliance with the constitutional requirement that the death penalty be applied narrowly to the worst offenders, and (2) ensures that the sentencing determination “expresses the values of the community as they currently relate to the imposition of the death penalty.” 202 So. 3d at 60-61. The function of the unanimity rule is to ensure that Florida’s death-sentencing scheme complies with the Eighth Amendment and to “achieve the important goal of bringing [Florida’s] capital sentencing laws into harmony with the direction of the society reflected in [the majority of death penalty] states and with federal law.” Id. As a matter of federal retroactivity law, the rule is therefore substantive. See Welch v. United States, 136 S. Ct. 1257, 1265 (2016) (“[T]his Court has determined whether a new rule is substantive or procedural by considering the function of the rule”). This is true even though the rule’s subject concerns the method by which a jury makes its decision. See Montgomery, 136 S. Ct. at 735 (noting that state’s ability to determine method of enforcing constitutional rule does not convert rule from substantive to procedural).

The United States Supreme Court’s decision in Welch is illustrative of the substantive nature of Hurst. In Welch, the Court addressed the retroactivity of the

constitutional rule articulated in Johnson v. United States, 135 S. Ct. 2551, 2560 (2015). In Johnson, the Court held that a federal statute that allowed sentencing enhancement was unconstitutional. Id. at 2556. Welch held that Johnson’s ruling was substantive because it “affected the reach of the underlying statute rather than the judicial procedures by which the statute is applied”—therefore it must be applied retroactively. Welch, 136 S. Ct. at 1265. The Court emphasized that its determination whether a constitutional rule is substantive or procedural “does not depend on whether the underlying constitutional guarantee is characterized as procedural or substantive,” but rather whether “the new rule itself has a procedural function or a substantive function,” i.e., whether the new rule alters only the procedures used to obtain the conviction, or alters instead the class of persons the law punishes. Id. at 1266. In Welch, the Court pointed out that, “[a]fter Johnson, the same person engaging in the same conduct is no longer subject to the Act and faces at most 10 years in prison. The residual clause is invalid under Johnson, so it can no longer mandate or authorize any sentence.” Id. Thus, “Johnson establishes, in other words, that even the use of impeccable factfinding procedures could not legitimate a sentence based on that clause.” Id. “It follows,” the Court held, “that Johnson is a substantive decision.” Id. (internal quotation omitted).

The same reasoning applies in the Hurst context. The Sixth Amendment requirement that each element of a Florida death sentence must be found beyond a reasonable doubt, and the Eighth Amendment requirement of jury unanimity in fact-finding, are substantive constitutional rules as a matter of federal law because they place certain murders “beyond the State’s power to punish,” Welch, 136 S. Ct. at

1265, with a sentence of death. Following the Hurst decisions, “[e]ven the use of impeccable factfinding procedures could not legitimate a sentence based on” the judge-sentencing scheme. Id. And in the context of a Welch analysis, the “unanimous finding of aggravating factors and [of] the facts that are sufficient to impose death, as well as the unanimous finding that they outweigh the mitigating circumstances, all serve to help narrow the class of murderers subject to capital punishment,” Hurst, 202 So. 3d at 60 (emphasis added), i.e., the new law by necessity places certain individuals beyond the state’s power to impose a death sentence. The decision in Welch makes clear that a substantive rule, rather than a procedural rule, resulted from the Hurst decisions. See Welch, 136 S. Ct. at 1264-65 (a substantive rule “alters . . . the class of persons that the law punishes.”).

Hurst retroactivity is not undermined by Summerlin, 542 U.S. at 364, where the United States Supreme Court held that Ring was not retroactive in a federal habeas case. In Ring, the Arizona statute permitted a death sentence to be imposed on a finding of fact that at least one aggravating factor existed. Summerlin did not review a statute, like Florida’s, that required the jury not only to conduct the fact-finding regarding the aggravators, but also as to whether the aggravators were sufficient to impose death and whether the death penalty was an appropriate sentence. Summerlin acknowledged that if the Court itself “[made] a certain fact essential to the death penalty . . . [the change] would be substantive.” 542 U.S. at 354. Such a change occurred in Hurst where, for the first time, the Court found it unconstitutional for a judge alone to find that “sufficient aggravating factors exist

and [t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances.” 136 S. Ct. at 622 (internal citation omitted).

Moreover, Hurst, unlike Ring, addressed the proof-beyond-a-reasonable-doubt standard in addition to the jury trial right, and the United States Supreme Court has always regarded proof-beyond-a-reasonable-doubt decisions as substantive. See, e.g., Ivan V. v. City of New York, 407 U.S. 203, 205 (1972) (explaining that “the major purpose of the constitutional standard of proof beyond a reasonable doubt announced in [In re Winship, 397 U.S. 358 (1970)] was to overcome an aspect of a criminal trial that substantially impairs the truth-finding function, and Winship is thus to be given complete retroactive effect.”); Powell v. Delaware, 153 A.3d 69 (Del. 2016) (holding Hurst retroactive under Delaware’s state Teague-like retroactivity doctrine and distinguishing Summerlin on the ground that Summerlin “only addressed the misallocation of fact-finding responsibility (judge versus jury) and not . . . the applicable burden of proof.”).

C. This Court has an obligation to address Mr. Suggs’ federal retroactivity arguments.

Because this Court is bound by the federal constitution, it has the obligation to address Mr. Suggs’ federal retroactivity arguments. See Testa v. Katt, 330 U.S. 386, 392-93 (1947). The federal constitutional issues were raised to this Court in Hitchcock, but this Court ignored them. Dismissing this appeal on the basis of Hitchcock would compound that error.

CONCLUSION

This Court should hold that Florida state law and federal law require that Hurst v. Florida and Hurst v. State apply retroactively to Mr. Suggs, vacate Mr. Suggs' death sentence, and remand to the circuit court for a new penalty phase or imposition of a life sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2017, the foregoing was delivered via electronic service to all counsel of record.

/s/ Dawn B. Macready
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EXHIBIT 5

IN THE SUPREME COURT OF FLORIDA

ERNEST D. SUGGS,

Appellant/Petitioner,

v.

STATE OF FLORIDA and
JULIE L. JONES, ETC.,

Appellee/Respondent.
_____ /

CASE NOS. SC17-1225 & SC16-1066
L.T. NO. 1997-CF-009232
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE/RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE AND FACTS.....	1
OBJECTION TO ORAL ARGUMENT.....	2
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	3
CONCLUSION.....	12
CERTIFICATE OF SERVICE.....	13
CERTIFICATE OF FONT COMPLIANCE.....	13

TABLE OF AUTHORITIES

Cases

<u>Apprendi v. New Jersey</u> , 530 U.S. 466 (2000).....	8
<u>Archer v. Florida</u> , 519 U.S. 876 (1996).....	9
<u>Archer v. Jones</u> , 2017 WL 1034409 (Fla. Mar. 17, 2017).....	9
<u>Asay v. Florida</u> , 502 U.S. 895 (1991).....	9
<u>Asay v. State</u> , 224 So. 3d 695 (Fla. Aug. 14, 2017).....	10
<u>Asay v. State</u> , 210 So. 3d 1 (Fla. 2016).....	4, 5
<u>Basse v. State</u> , 740 So. 2d 518 (Fla. 1999).....	3
<u>Bogle v. Florida</u> , 516 U.S. 978 (1995).....	9
<u>Bogle v. State</u> , 213 So. 3d 833 (Fla. 2017).....	9
<u>Cherry v. Florida</u> , 494 U.S. 1090 (1990).....	9
<u>Cherry v. Jones</u> , 2017 WL 1033693 (Fla. Mar. 17, 2017).....	9
<u>Danforth v. Minnesota</u> , 522 U.S. 264 (2008).....	5
<u>Davis v. Florida</u> , 524 U.S. 930 (1998).....	9
<u>Davis v. State</u> , 2017 WL 656307 (Fla. Feb. 17, 2017).....	9
<u>Dobbert v. Florida</u> , 432 U.S. 282 (1977).....	7
<u>Evitts v. Lucey</u> , 469 U.S. 387 (1985).....	4
<u>Finney v. State</u> , 660 So. 2d 674 (Fla. 1995).....	5
<u>Floyd v. State</u> , 497 So. 2d 1211 (Fla. 1986).....	5
<u>Gaskin v. Florida</u> , 510 U.S. 925 (1993).....	9
<u>Gaskin v. State</u> , 218 So. 3d 399 (Fla. Jan. 19, 2017).....	9
<u>Geralds v. Florida</u> , 519 U.S. 891 (1996).....	9
<u>Geralds v. Jones</u> , 2017 WL 944236 (Fla. Mar. 10, 2017).....	9
<u>Griffith v. Kentucky</u> , 479 U.S. 314 (1987).....	8
<u>Hamilton v. Florida</u> , 524 U.S. 956 (1998).....	9
<u>Hamilton v. Jones</u> , 2017 WL 836807 (Fla. Mar. 3, 2017).....	9
<u>Hartley v. Florida</u> , 522 U.S. 825 (1997).....	9
<u>Hartley v. Jones</u> , 2017 WL 944232 (Fla. Mar. 10, 2017).....	9
<u>Henry v. State</u> , 937 So. 2d 563 (Fla. 2006).....	3
<u>Hitchcock v. State</u> , 2017 WL 3431500 (Fla. Aug. 10, 2017) 2, 9, 10	
<u>Hitchcock v. State</u> , 531 U.S. 1040 (2000).....	9
<u>Hurst v. State</u> , 202 So. 3d 40 (Fla. 2016).....	4
<u>Ivan V. v. City of New York</u> , 407 U.S. 203 (1972).....	5
<u>Johnson v. State</u> , 904 So. 2d 400 (Fla. 2005).....	5
<u>Jones v. Florida</u> , 515 U.S. 1147 (1995).....	9
<u>Jones v. Jones</u> , 2017 WL 1034410 (Fla. Mar. 17, 2017).....	9
<u>Jones v. State</u> , 2017 WL 4296370 (Fla. Sept. 28, 2017).....	9
<u>Lambrix v. Florida</u> , 2017 WL 4456332 (Oct. 5, 2017).....	7

<u>Lambrix v. Sec’y, Fla. Dep’t of Corr.</u> , 2017 WL 4416205 (11th Cir. Oct. 5, 2017)	7
<u>Lambrix v. State</u> , 2017 WL 4320637 (Fla. Sept. 29, 2017).....	10
<u>Lambrix v. State</u> , 217 So. 3d 977 (Fla. Mar. 9, 2017).....	9
<u>Lukehart v. Florida</u> , 533 U.S. 934 (2001).....	9
<u>Lukehart v. Jones</u> , 2017 WL 1033691 (Fla. Mar. 17, 2017).....	9
<u>Marshall v. Florida</u> , 508 U.S. 915 (1993).....	9
<u>Marshall v. Jones</u> , 2017 WL 1739246 (Fla. May 4, 2017).....	9
<u>Oats v. Florida</u> , 474 U.S. 865 (1985).....	9
<u>Oats v. Jones</u> , 220 So. 3d 1127 (Fla. 2017).....	9
<u>Pennsylvania v. Finley</u> , 481 U.S. 551 (1987).....	4
<u>Penry v. Lynaugh</u> , 492 U.S. 302 (1989).....	7
<u>Powell v. Delaware</u> , 153 A.3d 69 (Del. 2016).....	5, 6
<u>Rauf v. State</u> , 145 A.3d 430 (Del. 2016).....	6
<u>Ring v. Arizona</u> , 536 U.S. 584 (2002).....	4
<u>Rodriguez v. Florida</u> , 510 U.S. 830 (1993).....	9
<u>Rodriguez v. State</u> , 219 So. 3d 751 (Fla. 2017).....	9
<u>Schriro v. Summerlin</u> , 542 U.S. 348 (2004).....	6
<u>Smith v. State</u> , 598 So. 2d 1063 (Fla. 1992).....	8
<u>Stein v. Florida</u> , 513 U.S. 834 (1994).....	9
<u>Stein v. Jones</u> , 2017 WL 836806 (Fla. Mar. 3, 2017).....	9
<u>Suggs v. Buss</u> , 131 S.Ct. 1809 (2011).....	1
<u>Suggs v. Florida</u> , 514 U.S. 1083 (1995).....	1, 9
<u>Suggs v. Jones</u> , 2017 WL 1033680 (Fla. Mar. 17, 2017).....	9
<u>Suggs v. Jones</u> , No. SC16-1066, 2017 WL 1033680 (Fla. Mar. 17, 2017)	10
<u>Suggs v. McNeil</u> , 609 F.3d 1218 (11th Cir. 2010).....	1
<u>Suggs v. State</u> , 644 So. 2d 64 (Fla. 1994).....	1
<u>Suggs v. State</u> , 923 So. 2d 419 (Fla. 2006).....	1
<u>Teague v. Lane</u> , 489 U.S. 288 (1989).....	5
<u>United States v. Battle</u> , 163 F.3d 1 (11th Cir. 1998).....	3
<u>Wainwright v. Florida</u> , 523 U.S. 1127 (1998).....	9
<u>Wainwright v. State</u> , 2017 WL 394509 (Fla. Jan. 30, 2017).....	9
<u>Willacy v. Florida</u> , 522 U.S. 970 (1997).....	9
<u>Willacy v. Jones</u> , 2017 WL 1033679 (Fla. Mar. 17, 2017).....	9
<u>Witt v. State</u> , 387 So. 2d 922 (Fla. 1980).....	5
<u>Zack v. Florida</u> , 531 U.S. 858 (2000).....	9
<u>Zack v. State</u> , 2017 WL 2590703 (Fla. June 15, 2017).....	9
<u>Zakrzewski v. Florida</u> , 525 U.S. 1126 (1999).....	9
<u>Zakrzewski v. Jones</u> , 221 So. 3d 1159 (Fla. 2017).....	9
<u>Zeigler v. State</u> , 580 So. 2d 127 (Fla. 1991).....	5

Other Authorities

Fla. R. Crim. P. 3.851(d) (1) (B) 1

STATEMENT OF THE CASE AND FACTS

Appellant/Petitioner, Ernest Suggs, was convicted of first degree murder, one count of armed burglary, and one count of kidnapping. Suggs v. State, 644 So. 2d 64 (Fla. 1994). The judgment and sentence became final upon denial of certiorari by the United States Supreme Court on April 24, 1995. Suggs v. Florida, 514 U.S. 1083 (1995); Fla. R. Crim. P. 3.851(d)(1)(B) (A judgment and sentence become final "on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed."). This Court affirmed the denial of Appellant/Petitioner's postconviction motion and denied a previous writ of habeas corpus. Suggs v. State, 923 So. 2d 419 (Fla. 2006). Appellant/Petitioner sought a writ of habeas corpus in federal court, which was denied. The Eleventh Circuit Court of Appeals affirmed the denial of Appellant/Petitioner's writ of habeas corpus. Suggs v. McNeil, 609 F.3d 1218 (11th Cir. 2010), cert. denied, Suggs v. Buss, 131 S.Ct. 1809 (2011).

On June 15, 2016, Appellant/Petitioner filed with this Court a petition for writ of habeas corpus. On March 17, 2017, the petition was denied.¹ After a motion for rehearing was filed, this

¹ In the order, this Court found that Suggs is not entitled to relief pursuant to the holding in Asay v. State, that Hurst v. Florida does not apply retroactively to capital defendants whose sentences were final before Ring was decided.

Court stayed the proceedings pending the disposition of Hitchcock. On August 10, 2017, this Court affirmed the conviction and sentence in Hitchcock in accordance with this Court's decision in Asay. Hitchcock v. State, No. SC17-445, 2017 WL 3431500, *2 (Fla. Aug. 10, 2017); Asay v. State, 210 So.3d 1 (Fla. 2016). On September 27, 2017, this Court issued an order for Appellant/Petitioner to show cause as to "why the habeas corpus should not be denied in light of this Court's decision in Hitchcock v. State, SC17-455." On October 17, 2017, Appellant/Petitioner filed his "Response to September 27, 2017 Order to Show Cause" (Response). This is the Appellee/Respondent's reply to Appellant/Petitioner's Response.

OBJECTION TO ORAL ARGUMENT

Appellee/Respondent objects to Appellant/Petitioner's request for oral argument. In the briefing schedule, this Court ordered the parties to respond to a limited issue that has been decided by this Court in other cases. As such, oral arguments would not serve any purpose other than to delay the proceedings.

SUMMARY OF THE ARGUMENT

The lower court properly summarily denied Appellant/Petitioner's successive motion for postconviction relief. Appellant/Petitioner has failed to show cause as to why his case should be excluded from this Court's precedent in Asay as reaffirmed by Hitchcock. Because Appellant/Petitioner's judgment

and sentence were final prior to the decision in Ring, Hurst is not retroactive to him.

ARGUMENT

A. Page Limitation

Appellant/Petitioner devotes approximately half of his pleading to the meritless argument that it is unconstitutional for this Court to impose a 20-page limitation on his response. However, as this Court noted in Henry v. State, 937 So. 2d 563, 575-76 (Fla. 2006) (quoting Basse v. State, 740 So. 2d 518, 519 (Fla. 1999)), the placement of reasonable page limitations is necessary to improve the ability of the court to issue rulings in a more timely and efficient fashion. As this Court stated, the placement of such reasonable page limitations requires counsel to “provide a distinct and succinct focus” to their pleadings in an effort to sharpen and simplify their arguments in a way that makes their case stronger. Id. at 576 (quoting United States v. Battle, 163 F.3d 1 (11th Cir. 1998)). Certainly, this Court’s placement of a 20-page limit to a response is not unreasonable given the narrow issue presented in this case.²

Furthermore, contrary to Appellant/Petitioner’s assertions, there is no federal or state constitutional violation in this Court’s procedure in placing a reasonable page limitation on the

² Appellant has further been granted the opportunity to file a 10-page reply to the State’s pleading.

pleadings in this case. Here, Appellant/Petitioner is represented by appointed counsel in the appeal from a successive postconviction motion and counsel has been provided a full and complete appellate record. Compare Pennsylvania v. Finley, 481 U.S. 551, 555-57 (1987) (finding that there is no federal constitutional right to postconviction relief, or to the appointment of an attorney for seeking that avenue of relief); Evitts v. Lucey, 469 U.S. 387, 393 (1985) (noting that an indigent criminal appellant is entitled to effective counsel for his first appeal only as a matter of right and must be provided with a transcript of the trial proceedings) (emphasis added).

Additionally, Appellant/Petitioner, in his petition for habeas corpus, was able to fully brief his argument as to why he is entitled to relief under Hurst.

Simply put, Appellant/Petitioner's argument that this Court's procedure violates federal or state constitutional provisions is without merit and devoid of any supporting caselaw.

B. Hitchcock/Hurst Claims

In Asay, this Court held that Hurst v. State is not retroactive to any case in which the death sentence was final prior to the June 24, 2002, decision in Ring. Asay v. State, 210 So. 3d 1, 22 (Fla. 2016); Hurst v. State, 202 So.3d 40 (Fla. 2016); Ring v. Arizona, 536 U.S. 584 (2002). The judgment in Asay became final

October 7, 1991, and thus Asay was not eligible for any relief under Hurst. Asay, 210 So. 3d at 8.

In Asay, this Court discussed the appropriate test for applying retroactivity to Hurst. Asay, 210 So. 3d at 15-16. This Court applied the Witt analysis for retroactivity under state law, “which provides more expansive retroactivity standards than those adopted in Teague,” which enumerates the federal retroactivity standards. Id. (emphasis in original), quoting Johnson v. State, 904 So. 2d 400, 409 (Fla. 2005); Witt v. State, 387 So. 2d 922 (Fla. 1980); Teague v. Lane, 489 U.S. 288 (1989); see also Danforth v. Minnesota, 522 U.S. 264, 280-81 (2008) (allowing states to adopt a retroactivity test that is broader than Teague).

Petitioner relies upon Ivan V. and Powell for the premise that Hurst should be retroactive under Teague as a substantive change. (Response at 19); Ivan V. v. City of New York, 407 U.S. 203, 205 (1972); Powell v. Delaware, 153 A.3d 69 (Del. 2016). Petitioner argues that Hurst “addressed the proof-beyond-a-reasonable-doubt standard.” (Response at 19). However, the standard of proof for proving aggravating factors in Florida has been beyond a reasonable doubt, long before Hurst was decided. See Floyd v. State, 497 So. 2d 1211, 1214-15 (Fla. 1986); Zeigler v. State, 580 So. 2d 127, 129 (Fla. 1991); Finney v. State, 660 So. 2d 674, 680 (Fla. 1995). The Delaware Court in Powell agreed: “neither Ring nor Hurst involved a Due Process Clause violation

caused by the unconstitutional use of a lower burden of proof.” Powell, 153 A.3d at 74. The Delaware Supreme Court used this fact to distinguish Delaware’s “watershed ruling” in Rauf which was the basis for Delaware to find that retroactivity applied to Powell under Teague, from Ring and Hurst. Powell, 153 A.3d at 74; Rauf v. State, 145 A.3d 430 (Del. 2016). Thus, Powell applies to Delaware cases and distinguishes Hurst and Ring under Delaware law.

Further, despite Appellant/Petitioner’s claim that Hurst created a substantive change requiring federal retroactivity, in Schriro, the Supreme Court determined that Ring was a procedural rule and did not create a substantive constitutional change in the law because it only “altered the range of permissible methods for determining whether a defendant’s conduct is punishable by death, requiring that a jury rather than a judge find the essential facts bearing on punishment.” Schriro v. Summerlin, 542 U.S. 348, 353 (2004). Ring did not alter the “range of conduct or the class of persons that the law punishes.” Id. Thus, Ring “announced a new procedural rule that does not apply retroactively to cases already final on direct review.” Id. at 358. Since the Supreme Court held that Ring did not create a substantive constitutional rule and is not retroactive, Hurst is also not a substantive constitutional rule, nor is it retroactive under federal law.

The Eleventh Circuit has rejected the argument that Hurst is retroactive under federal law, stating: “[t]he Supreme Court has held that Ring does not apply retroactively to cases on collateral review. See Schriro, 542 U.S. at 358[] (holding that Ring does not apply retroactively under federal law to death-penalty cases already final on direct review).” Lambrix v. Sec’y, Fla. Dep’t of Corr., No. 17-14413, 2017 WL 4416205, *8 (11th Cir. Oct. 5, 2017), cert. denied, Lambrix v. Florida, Nos. 17-6290, 17A380, 2017 WL 4456332 (Oct. 5, 2017). Further, the Eleventh Circuit held that this Court’s ruling, that Hurst did not retroactively apply to Lambrix, whose judgment was final in 1986, “is fully in accord with the U.S. Supreme Court’s precedent in Ring and Schriro.” Lambrix, 2017 WL 4416205 at *8. The Eleventh Circuit also rejected the statutory retroactivity argument stating

jurists of reason would not find this position debatable: the Florida court’s rejection of Lambrix’s constitutional-statutory claim was not contrary to, or an unreasonable application of, the holding of a Supreme Court decision.

Id. at *9; see also Dobbert v. Florida, 432 U.S. 282, 301 (1977).

Additionally, with retroactivity, there is usually a cutoff date to provide for finality in appellate processing. Penry v. Lynaugh, 492 U.S. 302, 314 (1989) (holding finality concerns in retroactivity are applicable in the capital context). In Griffith, the Supreme Court held “that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or

federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." Griffith v. Kentucky, 479 U.S. 314, 328 (1987); see also Smith v. State, 598 So. 2d 1063, 1065 (Fla. 1992). Under this "pipeline" concept, only those still pending direct review would receive the benefit of relief from Hurst error. The fact that this Court has drawn the line at the decision date in Ring instead of the decision date in Hurst, benefits more appellants. Thus, this Court's retroactivity cutoff does not violate the Fourteenth Amendment's guarantee of equal protection and due process.

In Asay, this Court discussed Appendi's role in developing the Court's decisions in Ring and Hurst. Asay, 210 So. 3d at 11-19. However, "the Supreme Court distinguished capital cases from its holding in Appendi." Id. at 19; citing Appendi v. New Jersey, 530 U.S. 466, 496-97 (2000) ("this Court has previously considered and rejected the argument that the principles guiding our decision today render invalid state capital sentencing schemes . . .").

After Asay, this Court continuously adhered to using the Ring decision date as the cutoff point for retroactivity. Thus far, this Court has chosen not to extend Hurst v. State to 23 cases, including Asay, based solely on the fact that the judgments were

finalized prior to the decision in Ring.³ Further, this Court has specifically addressed whether Hurst applies to Appellant/Petitioner. On March 17, 2017, this Court denied Appellant/Petitioner's writ of habeas corpus pursuant to the

³ See Asay, 210 So. 3d at 8, 22 (sentence final in 1991; see Asay v. Florida, 502 U.S. 895 (1991)); Jones v. State, No. SC15-1549, 2017 WL 4296370, *2 (Fla. Sept. 28, 2017); Hitchcock v. State, 2017 WL 3431500 (sentence final in 2000; see Hitchcock v. State, 531 U.S. 1040 (2000)); Zack v. State, Nos. SC15-1756, SC16-1090, 2017 WL 2590703, *5 (Fla. June 15, 2017) (sentence final in 2000; see Zack v. Florida, 531 U.S. 858 (2000)); Zakrzewski v. Jones, 221 So. 3d 1159, 1159 (Fla. 2017) (sentence final in 1999; see Zakrzewski v. Florida, 525 U.S. 1126 (1999)); Oats v. Jones, 220 So. 3d 1127, 1129 (Fla. 2017) (sentence final in 1985; see Oats v. Florida, 474 U.S. 865 (1985)); Marshall v. Jones, No. SC16-779, 2017 WL 1739246 (Fla. May 4, 2017) (sentence final in 1993; see Marshall v. Florida, 508 U.S. 915 (1993)); Rodriguez v. State, 219 So. 3d 751, 760 (Fla. 2017) (sentence final in 1993; see Rodriguez v. Florida, 510 U.S. 830 (1993)); Willacy v. Jones, No. SC16-497, 2017 WL 1033679 (Fla. Mar. 17, 2017) (sentence final in 1997; see Willacy v. Florida, 522 U.S. 970 (1997)); Suggs v. Jones, No. SC16-1066, 2017 WL 1033680, *1 (Fla. Mar. 17, 2017) (sentence final in 1995; see Suggs v. Florida, 514 U.S. 1083 (1995)); Lukehart v. Jones, No. SC16-1225, 2017 WL 1033691, *1 (Fla. Mar. 17, 2017) (sentence final in 2001; see Lukehart v. Florida, 533 U.S. 934 (2001)); Cherry v. Jones, No. SC16-694, 2017 WL 1033693, *1 (Fla. Mar. 17, 2017) (sentence final in 1990; see Cherry v. Florida, 494 U.S. 1090 (1990)); Archer v. Jones, No. SC16-2111, 2017 WL 1034409, *1 (Fla. Mar. 17, 2017) (sentence final in 1996; see Archer v. Florida, 519 U.S. 876 (1996)); Jones v. Jones, No. SC16-607, 2017 WL 1034410 (Fla. Mar. 17, 2017) (sentence final in 1995; see Jones v. Florida, 515 U.S. 1147 (1995)); Hartley v. Jones, No. SC16-1359, 2017 WL 944232, *1 (Fla. Mar. 10, 2017) (sentence final in 1997; see Hartley v. Florida, 522 U.S. 825 (1997)); Geralds v. Jones, No. SC16-659, 2017 WL 944236, *1 (Fla. Mar. 10, 2017) (sentence final in 1996; see Geralds v. Florida, 519 U.S. 891 (1996)); Lambrix v. State, 217 So. 3d 977, 989 (Fla. Mar. 9, 2017) (sentence final in 1986); Stein v. Jones, No. SC16-621, 2017 WL 836806 (Fla. Mar. 3, 2017) (sentence final in 1994; see Stein v. Florida, 513 U.S. 834 (1994)); Hamilton v. Jones, No. SC16-984, 2017 WL 836807 (Fla. Mar. 3, 2017) (sentence final in 1998; see Hamilton v. Florida, 524 U.S. 956 (1998)); Davis v. State, No. SC16-264, 2017 WL 656307 (Fla. Feb. 17, 2017) (sentence final in 1998; see Davis v. Florida, 524 U.S. 930 (1998)); Bogle v. State, 213 So. 3d 833, 855 (Fla. 2017) (sentence final in 1995; see Bogle v. Florida, 516 U.S. 978 (1995)); Wainwright v. State, No. SC15-2280, 2017 WL 394509 (Fla. Jan. 30, 2017) (sentence final in 1998; see Wainwright v. Florida, 523 U.S. 1127 (1998)); Gaskin v. State, 218 So. 3d 399, 400 (Fla. 2017) (sentence final in 1993; see Gaskin v. Florida, 510 U.S. 925 (1993)).

holding in Asay, 210 So. 3d 1, “that Hurst v. Florida does not apply retroactively to capital defendants whose sentences were final when Ring v. Arizona, 536 U.S. 584 (2002), was decided.” Suggs v. Jones, No. SC16-1066, 2017 WL 1033680 (Fla. Mar. 17, 2017).

On August 10, 2017, in Hitchcock, this Court reaffirmed the decision in Asay stating

[a]lthough Hitchcock references various constitutional provisions as a basis for arguments that Hurst v. State should entitle him to a new sentencing proceeding, these are nothing more than arguments that Hurst v. State should be applied retroactively to his sentence, which became final prior to Ring. As such, these arguments were rejected when we decided Asay. Accordingly, we affirm the circuit court's order summarily denying Hitchcock's successive postconviction motion pursuant to Asay.

Hitchcock, 2017 WL 3431500 at *2; see also Asay v. State, 224 So. 3d 695, 703 (Fla. 2017) (rejecting the claim that Chapter 2017-1, Laws of Florida, “creates a substantive right to a life sentence unless a jury unanimously recommends otherwise”); Lambrix v. State, No. SC17-1687, 2017 WL 4320637, *1 (Fla. Sept. 29, 2017) (rejecting arguments based on the Eighth Amendment, denial of due process and equal protection, and a substantive right based on new legislation).

Here, just as in Hitchcock, Appellant/Petitioner raises various constitutional provisions to argue that Hurst v. State should be retroactively applied to him. However, just as in Asay,

as reaffirmed by Hitchcock, Hurst v. State does not apply retroactively to Appellant/Petitioner. This case became final on November 13, 2001, which is prior to the June 24, 2002, decision in Ring. As such, Hurst v. State is not retroactive to this case. Thus, this Petition should be denied.

Appellant/Petitioner has demonstrated no cause that this Court should re-review his case. This Court's rulings in Asay and Hitchcock apply to Appellant/Petitioner. Because Appellant/Petitioner's judgment and sentence were final prior to the decision in Ring, Hurst is not retroactive to him.

CONCLUSION

In conclusion, as a matter of law, Appellant/Petitioner is not entitled to Hurst relief, and Appellee/Respondent respectfully requests that this Honorable Court affirm the postconviction court's order denying Appellant/Petitioner relief under Hurst.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 24th day of October, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Dawn Macready, Dawn.Macready@ccrc-north.org, and Stacy Biggart, Stacy.Biggart@ccrc-north.org, counsel for Appellant/Petitioner.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of the type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Lisa A. Hopkins
COUNSEL FOR
APPELLEE/RESPONDENT

EXHIBIT 6

IN THE SUPREME COURT OF FLORIDA

ERNEST D. SUGGS,

Appellant/Petitioner,

CASE NOS.: SC17-1225;
SC16-1066

v.

STATE OF FLORIDA and
JULIE L. JONES, ETC.,

Appellee/Respondent.

_____ /

APPELLANT'S REPLY¹

- I. The State is incorrect in asserting that Hitchcock addressed the federal retroactivity arguments Mr. Suggs raises in this proceeding.

The State is incorrect that “just as in Asay, as reaffirmed by Hitchcock, Hurst v. State does not apply retroactively to Appellant/Petitioner.” State’s Resp. at 10-11. This Court’s decision in Hitchcock v. State, No. SC17-445, 2017 WL 3431500 (Fla. Aug. 10, 2017), did not explicitly address or reject *any* of the federal retroactivity arguments Mr. Suggs raised in his show-cause response. See Suggs Resp. at 6-19.

This Court’s opinion in Hitchcock relied exclusively on the reasoning in Asay v. State, 210 So. 3d 1 (Fla. 2016). As the State acknowledges, the Court’s decision in Asay rested entirely on the state retroactivity law articulated in Witt v. State, 387 So. 2d 922 (Fla. 1980). See State’s Resp. at 5 (“In Asay . . . [t]his Court applied the Witt analysis for retroactivity under state law”); see also Asay, 210 So. 3d at 16 (“To apply a newly announced rule of law to a case that is already final at the time of the announcement, this Court must conduct a retroactivity analysis pursuant to

¹ Mr. Suggs renews his requests that the Court permit untruncated briefing and oral argument.

the dictates of Witt.’').² Asay did not address whether federal law required the Hurst decisions to be applied retroactively, and certainly did not address the federal retroactivity arguments raised in Mr. Suggs’s response to the order to show cause in this proceeding. Namely, Asay did not address whether a retroactivity “cutoff” drawn at Ring violates the Eighth Amendment’s prohibition against arbitrary and capricious imposition of the death penalty or the Fourteenth Amendment’s Equal Protection and Due Process Clauses. Nor did Asay address whether the Hurst decisions are “substantive” within the meaning of federal law, such that the Supremacy Clause of the Constitution requires state courts to apply the decisions retroactively in light of Montgomery v. Louisiana, 136 S. Ct. 718 (2016).

Hitchcock, in relying totally on Asay, also did not explicitly address or reject Mr. Suggs’s federal retroactivity arguments. See Hitchcock, 2017 WL 3431500, at *1 (“We affirm because we agree with the circuit court that our decision in Asay forecloses relief.”); id. at *2 (“Accordingly, we affirm the circuit court’s order summarily denying Hitchcock’s successive postconviction motion pursuant to Asay.”). The State’s response relies upon the conclusory sentence in Hitchcock that reads: “Although Hitchcock references various *constitutional provisions* as a basis for arguments that Hurst v. State should entitle him to a new sentencing proceeding, these are nothing more than arguments that Hurst v. State should be applied retroactively to his sentence, which became final prior to Ring.” State’s Resp. at 10 (quoting Hitchcock, 2017 WL 3431500, at *2) (emphasis added). But the Hitchcock

² As this Court has repeatedly emphasized, Witt addresses retroactivity as a matter of state law, which is separate and distinct from federal retroactivity analysis. See, e.g., Falcon v. State, 162 So. 3d 954, 955-56 (Fla. 2015).

Court’s reference to “constitutional provisions” cannot be reasonably read to address Mr. Suggs’s federal retroactivity arguments, as the very next sentence in Hitchcock reads: “As such, these arguments were rejected when we decided Asay.”). Hitchcock, 2017 WL 3431500, at *2. As explained above, Asay rested its analysis entirely on state retroactivity law and the Florida Constitution.

During the nearly eight months between this Court’s decisions in Asay and Hitchcock, many Hurst defendants have raised federal retroactivity arguments in this Court and the circuit courts, explaining that Asay did not resolve those matters in its exclusively state-law analysis and imploring that federal law be addressed. Those defendants, appellants, and petitioners, as Mr. Suggs does here, advanced federal retroactivity arguments under the Eighth and Fourteenth Amendments, as well as the Supremacy Clause and Montgomery. If this Court had intended to put those arguments to rest in Hitchcock, it could have done so. But any fair reading of Hitchcock leads to the conclusion that those issues remain unresolved in light of the Court’s wholesale reliance on Asay. Indeed, Hitchcock neither mentions the Eighth Amendment’s prohibition against arbitrary and capricious imposition of the death penalty, nor the Fourteenth Amendment’s Equal Protection and Due Process Clauses. Nor does Hitchcock cite Montgomery or otherwise explain why the Supremacy Clause does not require the substantive rules announced in the Hurst decisions to be retroactively applied by state courts.

To the extent the State suggests that Mr. Suggs’s federal arguments have been addressed in other cases, those decisions are not applicable here. To wit, the Eleventh Circuit’s decision in Lambrix v. Sec’y, No. 17-14413, 2017 WL 4416205

(11th Cir. Oct. 5, 2017), is not precedential in this Court and was decided in the context of the current federal habeas statute, which dramatically restricts federal review of state-court decisions. More importantly, Lambrix dealt with an idiosyncratic issue—the “retroactivity” of Florida’s new capital sentencing statute—and did not squarely address the retroactivity of the constitutional rules arising from the Hurst decisions. Similar idiosyncratic presentations also render inapplicable to Mr. Suggs this Court’s active-death-warrant decisions in Asay v. State, 224 So. 3d 695 (Fla. 2017), Lambrix v. State, No. SC17-1687, 2017 WL 4320637 (Fla. Sep. 29, 2017), and Hannon v. State, No. SC17-1837, 2017 WL 4944899 (Fla. Nov. 1, 2017).

II. The State’s cursory arguments concerning Hurst federal retroactivity are not persuasive.

The State fails to engage substantively in Mr. Suggs’s argument that a retroactivity cutoff at Ring violates the Eighth Amendment’s prohibition against arbitrary and capricious imposition of the death penalty. See Suggs Resp. at 8-11. The State has therefore abandoned any arguments on this issue. Cf. Hoskins v. State, 75 So. 3d 250, 257 (Fla. 2011); Hall v. State, 823 So. 2d 757, 763 (Fla. 2002).

The State’s failure to address the important Eighth Amendment problems with a Ring-based retroactivity cutoff is telling. As Mr. Suggs explained, a Ring cutoff injects into Florida’s death penalty jurisprudence a level of arbitrariness and capriciousness—and also denial of equal protection and due process of law—that is not present in typical circumstances where retroactivity is withheld based on widely-recognized pragmatic necessity for courts to evolve constitutional protections prospectively without undue cost to the finality of preexisting judgments.

A Hurst retroactivity cutoff at Ring inaugurates a degree of capriciousness that far exceeds the level justified by “normal” jurisprudence. To see why this is so, one need only consider how Florida’s pre-Ring inmates do and do not differ from their post-Ring peers. The two groups were both sentenced under a procedure that allowed death sentences to be predicated upon factual findings not tested by a jury trial. But inmates whose death sentences became final before Ring have been on death row longer than their post-Ring counterparts and have demonstrated over a longer time that they are capable of adjusting to that environment and live without endangering any valid interest of the State. Pre-Ring inmates also have undergone the prolonged suffering chronicled by Justice Breyer, dissenting from the denial of certiorari in Sireci v. Florida, 137 S. Ct. 470 (2016), longer than post-Ring inmates.

Pre-Ring inmates also are more likely than their post-Ring counterparts to have been sent to death row under standards that would not produce a capital sentence—or even a capital prosecution—under the conventions of decency prevailing today. In the generation since Ring, prosecutors and juries have been increasingly unlikely to seek and impose death sentences. A significant number of cases which terminated in a death verdict before Ring are cases where a death sentence would not be imposed, or even pursued, in the modern era. And pre-Ring inmates are more likely to have received death sentences in trials involving problematic factfinding: the past two decades have witnessed a broad-spectrum recognition of the unreliability of numerous kinds of evidence—flawed forensic-science theories and practices, hazardous eyewitness identification testimony, and so forth—that was accepted without question in pre-Ring capital trials. Doubts that

would cause today’s prosecutors, juries, and judges to hesitate to seek or impose a death sentence were unrecognized in the pre-Ring era. Evidence that led to confident convictions and unhesitating death sentences decades ago would have substantially less persuasive power to prosecutors, juries, and judges today.

Taken together, these considerations highlight that a Ring-based retroactivity cutoff involves a level of caprice that exceeds that tolerated by standard-fare retroactivity rules. A Ring cutoff’s denial of relief in precisely the class of cases in which relief makes the most sense is irremediably perverse and inconsistent with the Eighth and Fourteenth Amendments.

The cursory federal retroactivity arguments the State does advance can be dispensed with briefly. First, the State’s reliance on Griffith v. Kentucky, 479 U.S. 314, 328 (1987), see State’s Resp. at 8, is misguided. Griffith not only dealt with new procedural rules rather than substantive rules, but also rejected the “clear break” exception in order to *expand* the class of defendants who would get relief, not to narrow it. Id. at 326-27. Importantly, the stated reason for the Court’s decision was to avoid treating similarly-situated individuals differently. Id. at 328. This supports Mr. Suggs’s argument: a retroactivity cutoff that deprives some capital defendants of their fundamental right to a reliable determination of their sentences—while affording similarly-situated defendants the benefits of decision-making by a penalty-phase jury—violates the Fourteenth Amendment’s guarantee of equal protection.

The State also relies on Schriro v. Summerlin, 542 U.S. 348, 358 (2004), for the proposition that the United States Supreme Court’s ruling in that case—that Ring is not retroactive in a federal habeas proceeding—means that Hurst is not retroactive

in any proceeding. See State’s Resp. at 6. But as Mr. Suggs explained initially, see Suggs Resp. at 18-19, the Arizona statute at issue in Ring and Summerlin did not require fact-finding regarding the aggravators *and* their “sufficiency” to justify the death penalty. Summerlin acknowledged that if the Court itself “[made] a certain fact essential to the death penalty . . . [the change] would be substantive.” 542 U.S. at 354. Such a change occurred in the Hurst decisions where, for the first time, the United States Supreme Court and this Court found it unconstitutional for a judge alone to make a finding of fact as to the “sufficiency” of the aggravation.

Moreover, Hurst, unlike Ring, addressed the proof-beyond-a-reasonable-doubt standard. Although the State attempts to distinguish Ivan V. v. City of New York, 407 U.S. 203 (1972), and Powell v. Delaware, 153 A.3d 69 (Del. 2016), see State’s Resp. at 5-6, those attempts fall flat. Even assuming, as the State suggests, that Florida’s scheme formerly incorporated the beyond-a-reasonable-doubt standard, that standard was misapplied to findings of fact made by the trial judge, not by the jury. The Hurst decisions held that *the jury* must make the beyond-a-reasonable-doubt findings that subject a defendant to a death sentence. Indeed, a federal judge in Florida, citing Ivan, has already observed the distinction between the holding of Summerlin and the retroactivity of Hurst because of the beyond-a-reasonable-doubt standard. See Guardado v. Jones, No. 4:15-cv-256 (N.D. Fla. May 27, 2016) (contrasting Hurst to Ring and Summerlin, because the latter decisions “did not address the requirement for proof beyond a reasonable doubt,” and “[t]he Supreme Court has held a proof-beyond-a-reasonable-doubt decision retroactive”).

The State’s citation to Powell in arguing against the federal retroactivity of

Hurst, see State’s Resp. at 5-6, is particularly odd considering that in Powell, the Delaware Supreme Court applied a retroactivity test that mirrors the federal retroactivity test articulated in Teague v. Lane, 489 U.S. 288 (1989), and held that Hurst should be applied retroactively in Delaware. See Powell, 153 A.3d at 75-76. If anything, Powell favors Mr. Suggs’s position.

Finally, the State mischaracterizes Mr. Suggs’s arguments under Montgomery. Mr. Suggs correctly explained that Montgomery held that states are bound by the Supremacy Clause to apply constitutional rules retroactively when those rules are substantive within the meaning of federal law. See Suggs Resp. at 13-19; Montgomery, 136 S. Ct. at 728-29 (“[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.”). The Hurst decisions announced substantive rules, and the Supremacy Clause requires this Court to apply those rules retroactively.

III. The State abandons any “harmless error” arguments.

The State abandons any argument that the Hurst error in Mr. Suggs’s case was harmless by failing to even reference the harmless error doctrine in its response. See Hoskins, 75 So. 3d at 257 (“An issue not raised in an initial brief is deemed abandoned.”) (citing Hall, 823 So. 2d at 763 (Fla. 2002)) (quotation cleaned up). As Mr. Suggs argued in his initial filing, the Hurst error is not harmless under this Court’s precedent in light of the advisory jury’s non-unanimous recommendation.

IV. The State fails to rebut Mr. Suggs’s fundamental fairness argument regarding his pre-Ring preservation of the issues addressed in Hurst.

The State’s response ignores Mr. Suggs’s assertion that this Court’s “fundamental fairness” doctrine should entitle him to retroactive application of Hurst. See Suggs Resp. at 6-8. Thus, the unrefuted record before this Court reflects that, since well before Ring, Mr. Suggs consistently attempted to challenge his death sentence based upon the rationale in Hurst. As Mr. Suggs argued in his initial filing, this Court should apply the Hurst decision to him under the fundamental fairness doctrine, notwithstanding the date that his sentence became final.

CONCLUSION

For the reasons above and in Mr. Suggs’s initial response to the Court’s order to show cause, this Court should hold that federal law requires the Hurst decisions to be applied retroactively and vacate Mr. Suggs’s death sentence.

Respectfully submitted,

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I hereby certify that on November 12, 2017, this reply brief was electronically served via the e-portal to Assistant Attorney General Lisa A. Hopkins at Lisa.Hopkins@myfloridalegal.com.

/s/ Dawn B. Macready
Dawn B. Macready

EXHIBIT 7

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Florida Death-Penalty Appeals Decided in Light of Hurst

Last updated: April 6, 2018

Total number of prisoners whose cases have been reviewed by Florida Supreme Court (or, if relief is granted, by a Circuit Court) in light of *Hurst*: 257

Number of prisoners who have obtained relief under *Hurst*: 128 (49.81%)

Number of prisoners who have been denied relief under *Hurst*: 129 (50.19%)

The Florida Supreme Court has declared that it will apply its decisions in *Hurst v. State* and *Asay v. State*—which held that non-unanimous jury recommendation of death violate the Florida state constitution and the Sixth Amendment of the U.S. Constitution—to new death penalty cases and to older cases in which the direct appeal process was final on or before the U.S. Supreme Court decided *Ring v. Arizona* in June 2002.

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Abdool, Dane	Orange	N	N	10-2	Y	4/6/17
Allred, Andrew	Seminole	N	WAIVED JURY		N	11/16/17
Alston, Pressley Bernard	Duval	Y	N	9-3	N	1/22/18
Altersberger, Joshua Lee	Highlands	N	N	9-3	Y	4/27/17
Anderson, Charles L.	Broward	N	N	8-4	Y	3/9/17
Anderson, Richard	Hillsborough	Y	N	11-1	N	1/26/18
Archer, Robin Lee	Escambia	Y	N	7-5	N	3/17/17
Armstrong, Lancelot Uriley	Broward	N	N	9-3	Y	1/19/17
Asay, Marc	Duval	Y	N	9-3, 9-3	N (EXECUTED)	12/22/16
Atwater, Jeffrey Lee	Pinellas	Y	N	11-1	N	1/23/18
Ault, Howard Steven	Broward	N	N	9-3, 10-2	Y	3/9/17
Bailey, Robert J.	Bay	N	N	11-1	Y	7/6/17
Baker, Cornelius	Flagler	N	N	9-3	Y	3/23/17
Banks, Donald	Duval	N	N	10-2	Y	4/20/17
Bargo, Michael Shane	Marion	N	N	10-2	Y	6/29/17
Barnhill, Arthur	Seminole	N	N	9-3	Y	2/20/17
Barwick, Darryl Brian	Bay	Y	Y	12-0	N	2/28/18
Bates, Kayle Barrington	Bay	Y	N	9-3	N	1/22/18
Beasley, Curtis W.	Polk	Y	N	10-2	N	1/23/18
Belcher, James	Duval	N	N	9-3	Y	11/2/17
Bell, Michael	Duval	Y	Y	12-0, 12-0	N	1/29/18
Bevel, Thomas	Duval	N	N	8-4, 12-0	Y*	6/15/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Booker, Stephen Todd	Duval	Y	N	8-4	N	1/30/18
Bowles, Gary Ray	Duval	Y	Y	12-0	N	1/29/18
Braddy, Harrel	Miami-Dade	N	N	11-1	Y	6/15/17
Bradley, Brandon Lee	Brevard	N	N	10-2	Y	3/30/17
Bradley, Donald	Clay	Y	N	10-2	N	1/22/18
Branch, Eric Scott	Escambia	Y	N	10-2	N (EXECUTED)	1/22/18
Brookins, Elijah	Gadsden	N	N	10-2	Y	4/20/17
Brooks, Lamar	Okaloosa	N	N	9-3, 11-1	Y	3/10/17
Brown, Paul Alfred	Hillsborough	Y	N	7-5	N	1/29/18
Brown, Paul Anthony	Volusia	Y	Y	12-0	N	2/28/18
Burns, Daniel Jr.	Manatee	Y	Y	12-0	N	1/23/18
Buzia, John	Seminole	N	N	8-4	Y	4/6/17
Byrd, Milford Wade	Hillsborough	Y	Unknown	Unknown	N	2/28/18
Calloway, Tavares David	Miami-Dade	N	N	7-5, 7-5, 7-5, 7-5, 7-5	Y	1/26/17
Campbell, John	Citrus	N	N	8-4	Y	8/30/17
Card, James	Bay	N	N	11-1	Y	5/4/17
Carr, Emilia	Marion	N	N	7-5	Y	2/7/17
Carter, Pinkney	Duval	N	N	9-3, 8-4	Y	10/4//17
Caylor, Matthew	Bay	N	N	8-4	Y	5/18/17
Clark, Ronald Wayne Jr.	Duval	Y	N	11-1	N	1/23/18
Cole, Loran	Marion	Y	Y	12-0	N	1/23/18
Cole, Tiffany Ann	Duval	N	N	9-3, 9-3	Y	6/29/17
Conde, Rory	Miami-Dade	N	N	9-3	Y	8/31/17
Consalvo, Robert	Broward	Y	N	11-1	N	1/31/18
Cox, Allen	Lake	N	N	10-2	Y	7/23/17
Cozzie, Steven Anthony	Walton	N	Y	12-0	N	5/11/17
Crain, Willie Seth	Hillsborough	N	Y	12-0	N	4/5/18
Damren, Floyd William	Clay	Y	Y	12-0	N	2/2/18
Darling, Dolan a/k/a Sean Smith	Orange	N	N	11-1	Y	3/29/17
Davis, Adam W.	Hillsborough	N	N	7-5	Y	5/2/17
Davis, Barry T.	Walton	N	N	9-3, 10-2	Y	5/11/17
Davis, Jr., Leon	Polk	N	Y	12-0, 12-0, 8-4	N	11/10/16
Davis, Jr., Leon	Polk	N	WAIVED JURY		N	11/10/16
Davis, Mark Allen	Pinellas	Y	N	8-4	N	1/29/18
Davis, Toney D.	Duval	Y	N	11-1	N	2/17/17
Dennis, Labrant	Miami-Dade	N	N	11-1, 11-1	Y	7/7/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Deparvine, Williams James	Hillsborough	N	N	8-4, 8-4	Y	4/6/17
Derrick, Samuel Jason	Pasco	Y	N	7-5	N	2/2/18
Dessaure, Kenneth	Pinellas	N	WAIVED JURY		N	11/16/17
Deviney, Randall	Duval	N	N	8-4	Y	3/23/17
Diaz, Joel	Lee	N	N	9-3	Y	6/15/17
Dillbeck, Donald David	Leon	Y	N	8-4	N	1/24/18
Doorbal, Noel	Miami-Dade	N	N	8-4, 8-4	Y	9/20/17
Doty, Wayne	Bradford	N	N	10-2	Y	8/7/17
Douglas, Luther	Duval	N	N	11-1	Y	6/29/17
Dubose, Rasheem	Duval	N	N	8-4	Y	2/9/17
Durousseau, Paul	Duval	N	N	10-2	Y	1/31/17
Eaglin, Dwight	Charlotte	N	N	8-4, 8-4	Y	4/3/17
England, Richard	Volusia	N	N	8-4	Y	5/22/17
Evans, Paul H.	Indian River	N	N	9-3	Y	3/20/17
Evans, Steven Maurice	Orange	Y	N	11-1	N	1/24/18
Evans, Wydell Jody	Brevard	N	N	10-2	Y	
Finney, Charles	Hillsborough	Y	N	9-3	N	1/26/18
Floyd, Maurice Lamar	Putnam	N	N	11-1	Y	5/17/17
Ford, James D.	Charlotte	Y	N	11-1, 11-1	N	1/23/18
Foster, Charles	Bay	Y	N	8-4	N	1/29/18
Foster, Kevin Don	Lee	Y	N	9-3	N	1/29/18
Fotopoulos, Konstantinos	Volusia	Y	N	8-4, 8-4	N	1/29/18
Frances, David	Orange	N	N	9-3, 10-2	Y	3/29/17
Franklin, Richard P.	Columbia	N	N	9-3	Y	11/23/16
Gamble, Guy R.	Lake	Y	N	10-2	N	1/29/18
Gaskin, Louis	Flagler	Y	N	8-4, 8-4	N	2/28/18
Geralds, Mark Allen	Bay	Y	Y	12-0	N	2/28/18
Glover, Dennis T.	Duval	N	N	10-2	Y	9/14/17
Gonzalez, Leonard	Escambia	N	N	10-2	Y	5/23/17
Gonzalez, Ricardo	Miami-Dade	Y	N	8-4	N	3/23/18
Gordon, Robert R.	Pinellas	Y	N	9-3	N	1/31/18
Gregory, William	Volusia	N	N	7-5, 7-5	Y	8/31/17
Griffin, Michael Allen	Miami-Dade	Y	N	10-2	N	2/2/18
Grim, Norman	Santa Rosa	N	Y	12-0	N	3/29/18
Guardado, Jesse	Walton	N	Y	12-0	N	5/11/17
Gudinas, Thomas Lee	Collier	Y	N	10-2	N	1/30/18
Guzman, James	Volusia	N	N	11-1	Y	2/22/18

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Guzman, Victor	Miami-Dade	N	N	7-5	Y	4/6/17
Hall, Donte Jermaine	Lake	N	N	8-4	Y	6/15/17
Hall, Enoch D.	Volusia	N	Y	12-0	N	2/9/17
Hamilton, Richard	Hamilton	Y	N	10-2	N	2/18/18
Hampton, John	Pinellas	N	N	9-3	Y	5/4/17
Hannon, Patrick	Hillsborough	Y	Y	12-0	N (EXECUTED)	11/1/17
Hartley, Kenneth	Duval	Y	N	9-3	N	1/26/18
Hayward, Steven	St. Lucie	N	N	8-4	Y	3/24/17
Heath, Ronald Palmer	Alachua	Y	N	10-2	N	2/28/18
Hernandez, Michael	Santa Rosa	N	N	11-1	Y	5/11/17
Hernandez-Alberto, Pedro	Hillsborough	N	N	10-2, 10-2	Y	5/9/17
Hertz, Gerry	Wakulla	N	N	10-2, 10-2	Y	5/18/17
Heyne, Justin	Brevard	N	N	10-2, 8-4	Y	4/6/17
Hitchcock, James	Orange	Y	N	10-2	N	8/10/17
Hobart, Robert	Santa Rosa	N	N	7-5	Y	2/21/18
Hodges, George Michael	Hillsborough	Y	N	10-2	N	2/2/18
Hodges, Willie James	Escambia	N	N	10-2	Y	3/16/17
Hojan, Gerhard	Broward	N	N	9-3, 9-3	Y	1/31/17
Huggins, John	Orange	N	N	9-3	Y	5/23/17
Hunter, Jerone	Volusia	N	N	10-2, 10-2, 9-3, 9-3	Y	6/16/17
Hurst, Timothy	Escambia	N	N	7-5	Y	10/14/16
Hutchinson, Jeffrey	Okaloosa	N	WAIVED JURY	WAIVED JURY	N	3/15/18
Israel, Connie Ray	Duval	N	N	7-5	Y	3/21/17
Jackson, Etheria Verdell	Duval	Y	N	7-5	N	1/24/18
Jackson, Kenneth R.	Hillsborough	N	N	11-1	Y	3/23/17
Jackson, Michael James	Duval	N	N	8-4, 8-4	Y	6/9/17
Jackson, Ray	Volusia	N	N	9-3	Y	4/24/17
Jeffries, Kevin G.	Bay	N	N	10-2	Y	7/13/17
Jeffries, Sonny Ray	Orange	Y	N	11-1	N	1/26/18
Jennings, Brandy Bain	Collier	Y	N	10-2, 10-2, 10-2	N	1/29/18
Johnson, Emanuel	Sarasota	Y	N	8-4, 10-2	N	2/2/18
Johnson, Paul Beasley	Polk	N	N	11-1, 11-1, 11-1	Y	12/1/16
Johnson, Richard Allen	St. Lucie	N	N	11-1	Y	3/24/17
Johnson, Ronnie	Miami-Dade	Y	N	7-5, 9-3	N	3/27/18
Johnston, Ray	Hillsborough	N	N	11-1	Y	7/21/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Johnston, Ray	Hillsborough	N	Y	12-0	N	7/21/17
Jones, Henry Lee	Brevard	N	Y	12-0	N	3/2/17
Jones, Marvin Burnett	Duval	Y	N	9-3	N	1/22/18
Jones, Victor	Miami-Dade	Y	Y/N	10-2, 12-0	N	9/28/17
Jordan, Joseph	Volusia	N	N	10-2	Y	8/22/17
Kaczmar, III, Leo L.	Clay	N	Y	12-0	N	1/31/17
Kelley, William H.	Highlands	Y	N	8-3 [not a typo]	N	1/26/18
King, Cecil	Duval	N	N	8-4	Y	7/12/17
King, Michael L.	Sarasota	N	Y	12-0	N	1/26/17
Kirkman, Vahtiece	Brevard	N	Y	10-2	Y	1/11/18
Knight, Richard	Broward	N	Y	12-0, 12-0	N	1/31/17
Kocaker, Genghis	Pinellas	N	N	11-1	Y	10/6/17
Kokal, Gregory Alan	Duval	Y	Y	12-0	N	1/24/18
Kopsho, William M.	Marion	N	N	10-2	Y	1/19/17
Krawczuk, Anton	Duval	Y	Y	12-0	N	1/31/18
Lamarca, Anthony	Pinellas	Y	N	11-1	N	1/30/18
Lambrix, Cary Michael	Glades	Y	N	8-4, 10-2	N (EXECUTED)	9/29/17
Lawrence, Gary	Santa Rosa	Y	N	9-3	N	2/2/18
Lebron, Joel	Osceola	N	N	7-5	Y	4/20/17
Lightbourne, Ian	Marion	Y	N	Unrecorded	N	1/26/18
Long, Robert Joe	Hillsborough	Y	Y	12-0	N	1/29/18
Lucas, Harold Gene	Lee	Y	N	11-1	N	1/24/18
Marquard, John	St. Johns	Y	Y	12-0	N	1/24/18
Martin, David	Clay	N	N	9-3	Y	7/13/17
Matthews, Douglas	Volusia	N	N	10-2	Y	12/5/17
McCoy, Richard (aka Jamil Rashid)	Duval	N	N	7-5	Y	9/6/17
McCoy, Thomas	Walton	N	N	11-1	Y	11/8/17
McGirth, Renaldo Devon	Marion	N	N	11-1	Y	1/26/17
McKenzie, Norman Blake	St. Johns	N	N	10-2, 10-2	Y	6/19/17
McLean, Derrick	Orange	N	N	9-3	Y	4/24/17
McMillian, Justin	Duval	N	N	10-2	Y	4/13/17
Melton, Antonio Lebaron	Escambia	Y	N	8-4	N	2/2/18
Mendoza, Marbel	Miami-Dade	Y	N	7-5	N	1/30/18
Merck, Jr., Troy	Pinellas	N	N	9-3	Y	5/5/17
Middleton, Dale	Okeechobee	N	Y	12-0	N	3/9/17
Miller, David Jr.	Duval	Y	N	7-5	N	1/31/18
Miller, Lionel Michael	Orange	N	N	11-1	Y	5/8/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Morton, Alvin	Pasco	Y	N	11-1, 11-1	N	2/2/18
Morris, Dontae	Hillsborough	N	Y	12-0, 12-0	N	4/27/17
Morris, Dontae	Hillsborough	N	N	10-2	Y	1/11/18
Morris, Robert D.	Polk	Y	N	8-4	N	1/26/18
Mosley, John F.	Duval	N	N	8-4	Y	12/22/16
Mullens, Khadafy	Pinellas	N	WAIVED JURY		N	6/16/16
Murray, Gerald Delane	Duval	N	N	11-1	Y	4/4/17
Nelson, Joshua D.	Lee	Y	Y	12-0	N	1/31/18
Nelson, Micah	Polk	N	N	9-3	Y	3/8/17
Newberry, Rodney	Duval	N	N	8-4	Y	4/6/17
Oats, Jr. Sonny Boy	Marion	Y	UNKNOWN		N	5/25/17
Occhicone, Dominick A.	Pasco	Y	N	7-5	N	1/30/18
Okafor, Bessman	Orange	N	N	11-1	Y	6/8/17
Oliver, Terence Tabius	Brevard	N	Y	12-0, 12-0	N	4/6/17
Orme, Roderick	Bay	N	N	11-1	Y	3/30/17
Overton, Thomas M.	Monroe	Y	N	8-4, 9-3	N	2/2/18
Pace, Bruce Douglas	Santa Rosa	Y	N	7-5	N	1/30/18
Pagan, Alex	Broward	N	N	7-5, 7-5	Y	2/1/18
Parker, J.B.	Martin	N	N	11-1	Y	4/20/17
Partin, Phillip Alan	Pasco	N	N	9-3	Y	3/27/17
Pasha, Khalid	Hillsborough	N	N	11-1, 11-1	Y	5/11/17
Peterka, Daniel Jon	Okaloosa	Y	N	8-4	N	1/22/18
Peterson, Robert Earl	Duval	N	N	7-5	Y	7/6/17
Pham, Tai	Seminole	N	N	10-2	Y	3/22/17
Phillips, Galante	Duval	N	N	7-5	Y	4/20/17
Phillips, Harry Franklin	Miami-Dade	Y	N	7-5	N	1/22/18
Philmore, Lenard James	Martin	N	Y	12-0	N	1/25/18
Pietri, Norberto	Palm Beach	Y	N	8-4	N	2/2/18
Poole, Mark	Polk	N	N	11-1	Y	3/31/17
Pope, Thomas Dewey	Broward	Y	N	9-3	N	2/28/18
Puiatti, Carl	Pasco	Y	N	11-1	N	1/23/18
Quince, Kenneth Darcell	Volusia	Y	WAIVED JURY		N	1/18/18
Raleigh, Bobby Allen	Volusia	Y	Y	12-0, 12-0	N	2/28/18
Reynolds, Michael	Seminole	N	Y	12-0, 12-0	N	4/5/18
Rhodes, Richard Wallace	Pinellas	Y	N	10-2	N	1/23/18
Rigterink, Thomas William	Polk	N	N	7-5, 7-5	Y	4/6/17
Rimmer, Robert	Broward	N	N	9-3, 9-3	Y	6/29/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Robards, Richard	Pinellas	N	N	7-5, 7-5	Y	4/6/17
Rodgers, Jeremiah	Santa Rosa	N	WAIVED JURY		N	2/8/18
Rodgers, Theodore	Orange	N	N	8-4	Y	4/3/17
Rogers, Glen Edward	Hillsborough	Y	Y	12-0	N	1/30/18
Rodriguez, Manuel Antonio	Miami-Dade	Y	Y	12-0, 12-0, 12-0	N	1/31/18
San Martin, Pablo	Miami-Dade	Y	N	9-3	N	2/28/18
Schoenwetter, Randy	Brevard	N	N	10-2, 9-3	Y	4/7/17
Seibert, Michael	Broward	N	N	9-3	Y	6/22/17
Serrano, Nelson	Polk	N	N	9-3, 9-3, 9-3, 9-3	Y	5/11/17
Sexton, John	Pasco	N	N	10-2	Y	6/29/17
Silvia, William	Seminole	N	N	11-1	Y	2/20/17
Simmons, Eric Lee	Lake	N	N	8-4	Y	12/22/16
Sireci, Henry Perry	Orange	Y	N	11-1	N	1/31/18
Sliney, Jack R.	Charlotte	Y	N	7-5	N	1/31/18
Smith, Corey	Miami-Dade	N	N	9-3, 10-2	Y	3/16/17
Smith, Joseph	Sarasota	N	N	10-2	Y	7/13/17
Smith, Stephen V.	Charlotte	N	Y	9-3	Y	4/21/17
Smithers, Samuel	Hillsborough	N	Y	12-0, 12-0	N	3/29/18
Snelgrove, David B.	Flagler	N	N	8-4, 8-4	Y	5/11/17
Sochor, Dennis	Broward	Y	N	10-2	N	1/30/18
Stein, Steven Edward	Duval	Y	N	10-2	N	1/31/18
Stephens, Jason Demetrius	Duval	Y	N	9-3	N	1/22/18
Stewart, Kenneth Allen	Hillsborough	Y	N	10-2	Y	4/25/17
Stewart, Kenneth Allen	Hillsborough	Y	N	10-2	N	1/26/18
Sweet, William Earl	Duval	Y	N	10-2	N	1/24/18
Suggs, Ernest	Walton	Y	N	7-5	N	3/17/17
Tanzi, Michael	Monroe	N	Y	12-0	N	4/5/18
Taylor, John Calvin	Clay	N	N	10-2	Y	10/12/17
Taylor, Steven Richard	Duval	Y	N	10-2	N	1/24/18
Taylor, William Kenneth	Hillsborough	N	Y	12-0	N	4/5/18
Thomas, William Gregory	Duval	Y	N	11-1	N	1/24/18
Trease, Robert J.	Sarasota	Y	N	11-1	N	1/24/18
Trepal, George	Polk	Y	N	9-3	N	1/26/18
Trotter, Melvin	Manatee	Y	N	11-1	N	1/26/18
Troy, John	Sarasota	N	N	11-1	Y	6/13/17
Truehill, Quentin	St. Johns	N	Y	12-0	N	2/23/17

Prisoner Name	County of Conviction	Conviction Final Before Ring?	Jury Recommendation Unanimous?	Jury Vote(s)	Death Sentence Reversed?	Date of Court Order
Tundidor, Randy W.	Broward	N	Y	12-0	N	4/27/17
Turner, James Daniel	St. Johns	N	N	10-2	Y	6/19/17
Twilegar, Mark	Lee	Y	WAIVED JURY		N	11/2/17
Victorino, Troy	Volusia	N	N	10-2, 10-2, 9-3, 7-5	Y	6/14/17
Wade, Alan L.	Duval	N	N	11-1, 11-1	Y	5/1/17
Walls, Frank	Okaloosa	Y	Y	12-0	N	1/22/18
Wheeler, Jason	Lake	N	N	10-2	Y	5/23/17
White, Dwayne	Seminole	N	N	8-4	Y	3/30/17
Whitfield, Ernest	Sarasota	Y	N	7-5	Y	1/30/18
White, William Melvin	Orange	N	N	10-2	Y	4/20/17
Whitton, Gary Richard	Walton	Y	Y	12-0	N	1/31/18
Willacy, Chadwick	Brevard	Y	N	11-1	N	1/23/18
Williams, Donald Otis	Lake	N	N	9-3	Y	1/19/17
Williams , Ronnie Keith	Broward	N	N	10-2	Y	6/29/17
Windom, Curtis	Orange	Y	Y	12-0, 12-0, 12-0	N	1/23/18
Wood, Zachary Taylor	Washington	N	Y	12-0	Y**	1/31/17
Woodel, Thomas	Polk	N	N	7-5	Y	8/18/17
Zack, Michael Duane	Escambia	Y	N	11-1	N	6/15/17
Zakrzewski, Edward	Okaloosa	Y	N	7-5, 7-5, 6-6	N	5/25/17
Zommer, Todd	Osceola	N	N	10-2	Y	4/13/17

* The Florida Supreme Court granted relief under *Hurst* on Bevel's non-unanimous death sentence, but granted relief based on ineffective assistance of counsel on Bevel's unanimous death sentence.

** The Florida Supreme Court noted that Wood's sentence would not have been harmless under *Hurst* because it struck two of the three aggravating circumstances found by the trial court; however, the court vacated the death sentence and imposed a life sentence under its statutory review for proportionality. Not counted in total.

For more background on the Florida legislative and court actions related to the jury unanimity issue, see [Hurst v. Florida Background](#).

To check on the status of cases involving Florida death-row prisoners with non-unanimous jury recommendations for death whose sentences became final after the U.S. Supreme Court's June 2002 decision in *Ring v. Arizona*, see [this chart](#).

Hannah Gorman, with the Florida Center for Capital Representation at Florida International University, created the pie chart below (November 16, 2017) based on her analysis of Florida death sentences that have been or will be overturned based on *Hurst*, as well as sentences that have been or will be affirmed because they either (A) became final before *Ring* (i.e., based on the date of their appeal) or (B) were presumed harmless based on a unanimous jury verdict or the defendant's waiver of a jury sentence. This chart includes prisoners who have had their death sentences affirmed by Circuit Courts. According to this information, there are a total of 377 prisoners who were sentenced under the unconstitutional sentencing scheme, but only 42% (157) of Florida death-row prisoners who were sentenced under that scheme will be entitled to relief.

The Arbitrary Nature of Florida's Death Penalty Law: The Impact of *Hurst* on Death Row

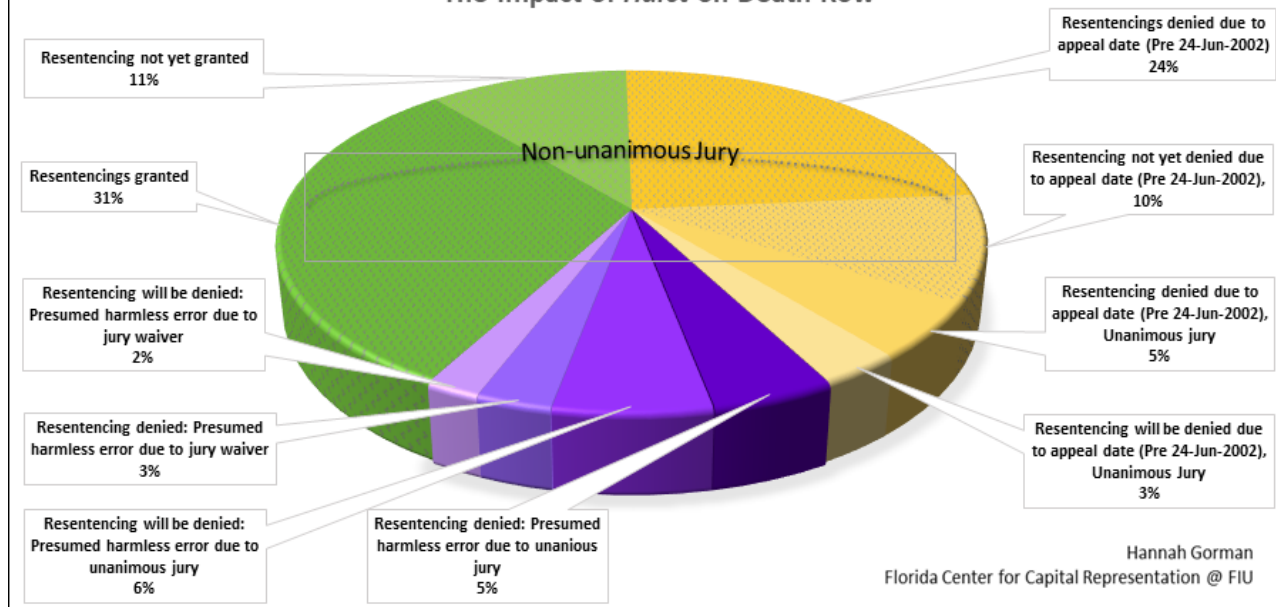


EXHIBIT 8

1. *Alston v. State*, Nos. SC17-499, SC17-983, 2018 WL 494427 (Fla. Jan. 22, 2018)
2. *Bates v. State*, 238 So. 3d 98 (Fla. 2018)
3. *Bradley v. Jones*, 238 So. 3d 95 (Fla. 2018)
4. *Branch v. State*, 234 So. 3d 548 (Fla. 2018)
5. *Jones v. State*, 234 So. 3d 545 (Fla. 2018)
6. *Peterka v. State*, 237 So. 3d 903 (Fla. 2018)
7. *Phillips v. State*, 234 So. 3d 547 (Fla. 2018)
8. *Stephens v. State*, 238 So. 3d 94 (Fla. 2018)
9. *Suggs v. State*, 234 So. 3d 546 (Fla. 2018)
10. *Walls v. State*, 238 So. 3d 96 (Fla. 2018)
11. *Atwater v. State*, 234 So. 3d 550 (Fla. 2018)
12. *Beasley v. State*, 234 So. 3d 553 (Fla. 2018)
13. *Burns v. State*, 234 So. 3d 555 (Fla. 2018)
14. *Clark v. State*, 238 So. 3d 99 (Fla. 2018)
15. *Cole v. State*, 234 So. 3d 644 (Fla. 2018)
16. *Ford v. State*, 237 So. 3d 904 (Fla. 2018)
17. *Puiatti v. State*, 234 So. 3d 551 (Fla. 2018)
18. *Rhodes v. State*, 234 So. 3d 554 (Fla. 2018)
19. *Willacy v. State*, 238 So. 3d 100 (Fla. 2018)
20. *Windom v. State*, 234 So. 3d 556 (Fla. 2018)
21. *Dillbeck v. State*, 234 So. 3d 558 (Fla. 2018)
22. *Evans v. State*, No. SC17-869, 2018 WL 524796 (Fla. 2018)
23. *Jackson v. State*, 237 So. 3d 905 (Fla. 2018)

24. *Kokal v. State*, 237 So. 3d 907 (Fla. 2018)
25. *Lucas v. State*, 234 So. 3d 647 (Fla. 2018)
26. *Marquard v. State*, 234 So. 3d 560 (Fla. Jan. 24, 2018)
27. *Sweet v. State*, 234 So. 3d 646 (Fla. 2018)
28. *Taylor v. State*, 234 So. 3d 649 (Fla. 2018)
29. *Thomas v. State*, 234 So. 3d 559 (Fla. 2018)
30. *Trease v. State*, No. SC17-686, 2018 WL 1959603 (Fla. Apr. 26, 2018)
31. *Anderson v. State*, 235 So. 3d 277 (Fla. 2018)
32. *Finney v. State*, 235 So. 3d 279 (Fla. 2018)
33. *Hartley v. State*, 237 So. 3d 908 (Fla. 2018)
34. *Jeffries v. State*, 235 So. 3d 283 (Fla. 2018)
35. *Kelley v. State*, 235 So. 3d 280 (Fla. 2018)
36. *Lightbourne v. State*, 235 So. 3d 285 (Fla. 2018)
37. *Morris v. State*, 236 So. 3d 324 (Fla. 2018)
38. *Stewart v. State*, 235 So. 3d 798 (Fla. 2018)
39. *Trepal v. State*, 235 So. 3d 281 (Fla. 2018)
40. *Trotter v. State*, 235 So. 3d 284 (Fla. 2018)
41. *Bell v. State*, 235 So. 3d 287 (Fla. 2018)
42. *Bowles v. State*, 235 So. 3d 292 (Fla. 2018)
43. *Brown v. State*, 235 So. 3d 289 (Fla. 2018)
44. *Davis v. State*, 235 So. 3d 295 (Fla. 2018)
45. *Foster v. State*, 235 So. 3d 290 (Fla. 2018)
46. *Foster v. State*, 235 So. 3d 294 (Fla. 2018)

47. *Fotopoulos v. State*, 237 So. 3d 911 (Fla. 2018)
48. *Gamble v. State*, 235 So. 3d 288 (Fla. 2018)
49. *Jennings v. State*, 237 So. 3d 909 (Fla. 2018)
50. *Long v. State*, 235 So. 3d 293 (Fla. 2018)
51. *Booker v. Jones*, 235 So. 3d 298 (Fla. 2018)
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