

DOCKET No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DOMINICK A. OCCHICONE,

Petitioner,

VS.

STATE OF FLORIDA,

Respondent.

APPLICATION FOR SIXTY (60) DAY EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA ADDRESSED
TO JUSTICE CLARENCE THOMAS

PETITIONER, Dominick A. Occhicone, respectfully requests an extension of time of sixty (60) days to file his Petition for Writ of Certiorari to the Supreme Court of Florida, pursuant to Supreme Court Rule 13. In support of his request, Petitioner states as follows:

1. Mr. Occhicone is an indigent death-sentenced inmate in the custody of the State of Florida. Mr. Occhicone was convicted of murder in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida.

2. Undersigned counsel was appointed to represent Mr. Occhicone in his post-conviction proceedings in the Circuit Court of the Sixth Judicial Circuit of Florida and in the Supreme Court of Florida.

3. This case involves an appeal from the decision of the Supreme Court of Florida denying Mr. Occhicone's Motion to Vacate Judgment of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851, in light of this Court's decision in *Hurst v. Florida*, 136

S. Ct. 616 (2016).

4. Mr. Occhicone will file a Petition for Writ of Certiorari in this Court.

5. On January 30, 2018, the Supreme Court of Florida issued an opinion denying Mr. Occhicone's appeal of his Motion to Vacate Judgment of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851. *See Occhicone v. State*, 235 So. 3d 299 (Fla. 2018) (Attachment A). Calculating the time for Mr. Occhicone to file a Petition for Writ of Certiorari, the 90th day would fall on Monday April 30, 2018.

6. This Court has jurisdiction based on 28 U.S.C. § 1257.

7. Undersigned counsel is employed by the Law Office of the Capital Collateral Regional Counsel-Middle Region (CCRC-M), a State of Florida governmental agency. Undersigned counsel is uniquely qualified to draft the Petition for Certiorari based on her lengthy experience of representing Mr. Occhicone in Florida courts.

8. CCRC-M has experienced a loss of attorneys based on recent resignations and retirements and undersigned counsel's caseload has increased. The additional cases involve complex procedural histories and legal issues that undersigned counsel is attempting to become familiar with to provide proper representation to these new clients. Further, undersigned counsel has had a number of state and federal filings due in the interim (*William Roger Davis v. State of Florida*; *William Roger Davis v. Barry Reddish, et. al.*; *Tavares Wright v. State of Florida*; *Margaret Allen v. State of Florida*; *Richard E. Lynch v. State of Florida*; *Emilia L. Carr v. State of Florida*; *Terence Tabius Oliver v. State of Florida*; *Michael L. King v. Secy', Department of Corrections*; *Quawn M. Franklin v. Secy', Department of Corrections*.) Undersigned counsel also has a bi-furcated evidentiary hearing set for next week (*Joseph Edward Jordan v. State of Florida*).

9. In addition, undersigned counsel has been addressing the implications of this Court's

decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016) and the Supreme Court of Florida's decisions that followed. Since the Supreme Court of Florida issued per curiam opinions *en masse* in early 2018 on the implications of *Hurst*, undersigned counsel is responsible for preparing petitions for certiorari in four other cases simultaneously (*Sonny Ray Jeffries v. Florida*; *Paul Alfred Brown v. Florida*; *Quawn M. Franklin v. State of Florida*; *Kenneth Darcell Quince v. Florida*), in addition to carrying a full post-conviction case load.

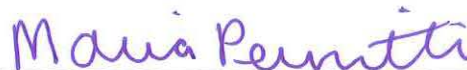
10. Mr. Occhicone respectfully requests an extension of sixty (60) days to file a Petition for Writ of Certiorari.

WHEREFORE, Petitioner, through his counsel, respectfully requests an extension of time of sixty (60) days to file the Petition for Writ of Certiorari to the Supreme Court of the Florida in this case.

Respectfully submitted



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April 4, 2018

Dated

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ATTACHMENT A

See Occhicone v. State, 235 So. 3d 299 (Fla. 2018)

235 So.3d 299
Supreme Court of Florida.

Dominick A. OCCHICONE, Appellant,
v.
STATE of Florida, Appellee.

No. SC17-1112

[January 30, 2018]

Synopsis

Background: Defendant who had been sentenced to death filed a motion for collateral relief. The Circuit Court, Pasco County, No. 511986CF001355CFAXWS, Stanley R. Mills, Senior Judge, denied the motion. Defendant appealed.

[Holding:] The Supreme Court held that *Hurst v. State*, 202 So. 3d 40, which required a jury to unanimously find that aggravating factors were sufficient to impose death, did not apply retroactively to defendant's death sentence.

Affirmed.

Pariente, J., filed an opinion concurring in result.

Lewis and Canady, JJ., concurred in result.

An Appeal from the Circuit Court in and for Pasco County, Stanley R. Mills, Senior Judge—Case No. 511986CF001355CFAXWS

Attorneys and Law Firms

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, Maria Christine Perinetti, Raheela Ahmed and Lisa Marie Bort, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida, for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Stephen D. Ake, Senior Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

*300 We have for review Dominick A. Occhicone's appeal of the circuit court's order denying Occhicone's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Occhicone's motion sought relief pursuant to the United States Supreme Court's decision in *Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and our decision on remand in *Hurst v. State* (*Hurst*), 202 So.3d 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017). This Court stayed Occhicone's appeal pending the disposition of *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017), cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017). After this Court decided *Hitchcock*, Occhicone responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Occhicone's response to the order to show cause, as well as the State's arguments in reply, we conclude that Occhicone is not entitled to relief. Occhicone was sentenced to death following a jury's recommendation for death by a vote of seven to five. See *Occhicone v. State*, 570 So.2d 902, 904 (Fla. 1990).¹ His sentence of death became final in 1991. *Occhicone v. Florida*, 500 U.S. 938, 111 S.Ct. 2067, 114 L.Ed.2d 471 (1991). Thus, *Hurst* does not apply retroactively to Occhicone's sentence of death. See *Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Occhicone's motion.

¹ Occhicone was convicted of two counts of first-degree murder, and the jury recommended a sentence of death for each count; however, the trial court sentenced Occhicone to death for only one count of first-degree murder. *Occhicone*, 570 So.2d at 904. While the jury vote is not in this Court's opinion on direct appeal, this Court's opinion addressing the circuit court's denial of Occhicone's initial postconviction motion states that the jury recommended sentences of death for both murders by a vote of seven to five. *Occhicone v. State*, 768 So.2d 1037, 1039 (Fla. 2000).

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

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

PARIENTE, J., concurs in result with an opinion.

LEWIS and CANADY, JJ., concur in result.

QUINCE, J., recused.

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, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

All Citations

235 So.3d 299, 43 Fla. L. Weekly S50