

237 So.3d 908
Supreme Court of Florida.

[Kenneth HARTLEY](#), Appellant,

v.

STATE of Florida, Appellee.

No. SC17-899

|

[January 26, 2018]

Synopsis

Background: Motion was filed for post-conviction relief following affirmance of death sentence, [686 So.2d 1316](#). The Circuit Court, Duval County, [Russell L. Healey, J.](#), No. 161991CF008144AXXXMA, denied motion. Movant appealed.

[Holding:] The Supreme Court held that Supreme Court's [Hurst](#), [136 S.Ct. 616](#), decision invalidating capital sentencing scheme did not apply retroactively to conviction that became final in 1997.

Affirmed.

[Pariente, J.](#), concurred in result and filed statement.

[Lewis](#) and [Canady, JJ.](#), concurred in result.

West Headnotes (1)

[1] Courts

 **In general;retroactive or prospective operation**

United States Supreme Court's [Hurst](#), [136 S.Ct. 616](#), decision invalidating capital sentencing scheme as violating Sixth Amendment did not apply retroactively to conviction that became final in 1997. [U.S. Const. Amend. 6](#).

Cases that cite this headnote

An Appeal from the Circuit Court in and for Duval County, [Russell L. Healey](#), Judge—Case No. 161991CF008144AXXXMA

Attorneys and Law Firms

[Linda McDermott](#) of McClain and McDermott, Estero, Florida, for Appellant

[Pamela Jo Bondi](#), Attorney General, and [Lisa Hopkins](#), Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

***909** We have for review Kenneth Hartley's appeal of the circuit court's order denying Hartley's motion filed pursuant to [Florida Rule of Criminal Procedure 3.851](#). This Court has jurisdiction. *See* [art. V, § 3\(b\)\(1\), Fla. Const.](#)

Hartley'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 Hartley'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](#), Hartley responded to this Court's order to show cause arguing why [Hitchcock](#) should not be dispositive in this case.

After reviewing Hartley's response to the order to show cause, as well as the State's arguments in reply, we conclude that Hartley is not entitled to relief. Hartley was sentenced to death following a jury's recommendation for death by a vote of nine to three. [Hartley v. State](#), [686 So.2d 1316](#), [1319](#) (Fla. 1996). Hartley's sentence of death became final in 1997. [Hartley v. Florida](#), [522 U.S. 825](#), [118 S.Ct. 86](#), [139 L.Ed.2d 43](#) (1997). Thus, [Hurst](#) does not apply retroactively to Hartley's sentence of death. *See* [Hitchcock](#), [226 So.3d at 217](#). Accordingly, we affirm the denial of Hartley's motion.

The Court having carefully considered all arguments raised by Hartley, 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, — 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

237 So.3d 908, 43 Fla. L. Weekly S43