

CAPITAL CASE

No. _____

IN THE
Supreme Court of the United States

JOHN MARQUARD

Petitioner,

v.

STATE OF FLORIDA

Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT*

APPENDIX

Ali A. Shakoor
Florida Bar No. 0669830
Office of the Capital Collateral
Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
Phone No. (813) 558-1600 ext. 608
Attorney of Record for Petitioner

INDEX TO APPENDICES

Appendix A- Florida Supreme Court Opinion Below (Jan. 24, 2018)

Appendix B- Florida Supreme Court Order to Show Cause (Sep. 22, 2017)

Appendix C- Postconviction Court Order Denying Relief (Mar. 31, 2017)

APPENDIX

A

Supreme Court of Florida

No. SC17-862

JOHN CHRISTOPHER MARQUARD,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 24, 2018]

PER CURIAM.

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

Marquard's motion 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 Marquard's appeal 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, Marquard responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Marquard's response to the order to show cause, as well as the State's arguments in reply, we conclude that Marquard is not entitled to relief. Marquard was sentenced to death following a jury's unanimous recommendation for death. Marquard v. State, 641 So. 2d 54, 56 (Fla. 1994). Marquard's sentence of death became final in 1995. Marquard v. Florida, 513 U.S. 1132 (1995). Thus, Hurst does not apply retroactively to Marquard's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Marquard's motion.

The Court having carefully considered all arguments raised by Marquard, 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 St. Johns County,
Howard Mason Maltz, Judge - Case No. 551991CF002418XXAXMX

James Vigianno, Capital Collateral Regional Counsel, Adriana Corso, and Ali Andrew Shakoor, Assistant Capital Collateral Regional Counsel, Temple Terrace, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Leslie T. Campbell, Assistant Attorney General, West Palm Beach, Florida,

for Appellee

APPENDIX

B

Supreme Court of Florida

FRIDAY, SEPTEMBER 22, 2017

CASE NO.: SC17-862

Lower Tribunal No(s).:
551991CF002418XXAXMX

JOHN CHRISTOPHER MARQUARD vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

Appellant shall show cause on or before Thursday, October 12, 2017, why the trial court's order should not be affirmed in light of this Court's decision Hitchcock v. State, SC17-445. The response shall be limited to no more than 20 pages. Appellee may file a reply on or before Monday, October 22, 2017, limited to no more than 15 pages. Appellant may file a reply to the Respondent's reply on or before Wednesday, November 1, 2017, limited to no more than 10 pages.

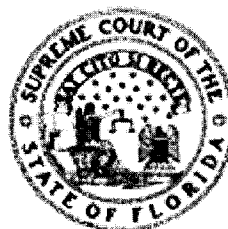
Motions for extensions of time will not be considered unless due to a medical emergency.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



jat

Served:

VIVIAN SINGLETON
ALI ANDREW SHAKOOR ESQUIRE

APPENDIX

C

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418
DIVISION: 56

STATE OF FLORIDA,

vs.

JOHN CHRISTOPHER MARQUARD,
Defendant.

**ORDER ON DEFENDANT'S SECOND SUCCESSIVE MOTION
TO VACATE DEATH SENTENCE**

THIS CAUSE came before the Court on Defendant's "Second Successive Motion to Vacate Death Sentence" filed pursuant to Rule 3.851, Florida Rules of Criminal Procedure. The Court has reviewed and considered Defendant's Motion and the State's Response thereto, and has heard and considered the argument of counsel, and being otherwise fully advised in the premises finds as follows:

Defendant was charged with first-degree murder and armed robbery with a deadly weapon. A jury found Defendant guilty as to both counts and Defendant was sentenced on February 5, 1993, to death for the murder conviction and life in prison for the armed robbery conviction. Defendant appealed his first-degree murder conviction and death sentence, and the Supreme Court of Florida affirmed Defendant's conviction and sentence on June 9, 1994, rehearing denied, August 23, 1994. On November 21, 1994, Defendant filed a Petition for Writ of Certiorari

with the United States Supreme Court which was denied on January 23, 1995. Defendant filed his first Motion for Post-conviction Relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure on March 26, 1997, which included a special request for leave to amend. Thereafter, Defendant filed an amended Motion for Post-conviction Relief on February 22, 1999, raising eight grounds, including five claims alleging ineffective assistance of counsel. The Court held an evidentiary hearing on two of the grounds and summarily denied the remaining grounds. Following the evidentiary hearing, the Court denied the remaining grounds on December 21, 1999. Defendant appealed the Court's denial of his Post-conviction Motion to the Supreme Court of Florida, and while his appeal was pending, Defendant filed a Petition for Writ of Habeas Corpus with the Supreme Court of Florida. The Supreme Court of Florida affirmed the Court's denial of Defendant's Motion for Post-conviction Relief and denied the Petition for Writ of Habeas Corpus on November 21, 2002. Defendant's request for rehearing on the Petition for Habeas Corpus was denied on July 15, 2003. Subsequent thereto, Defendant filed a Petition for Writ of Habeas Corpus with the United States District Court, Middle District which was denied and dismissed with prejudice on January 18, 2005, which was affirmed by the United States Court of Appeals, Eleventh Circuit on November 10, 2005. Thereafter, Defendant filed a Petition for Writ of Certiorari with the United States Supreme Court which was denied on June 5, 2006. On September 12, 2007, Defendant filed a Successive Motion for Post-

conviction Relief pursuant to Rule 3.851 claiming newly discovered evidence. The Court held an evidentiary hearing on Defendant's motion on December 14, 2007 and rendered an order denying that motion on January 8, 2008.

Presently before the Court is Defendant's "Second Successive Motion to Vacate Death Sentence," filed January 9, 2017. The Defendant seeks to have his death sentence vacated pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So.3d 40 (Fla. 2016). Additionally, many of Defendant's arguments flow from some of the more nuanced matters inherent in Florida's post-*Hurst* retroactivity decisions, including whether a *Ring*-like challenge was previously raised, a distinction between the Sixth Amendment and Eighth Amendment issues addressed in *Hurst v. State*, substantive versus procedural rule changes, applicability of the Supremacy Clause, and the potentially arbitrary effects of using *Ring* as a bright-line cutoff for retroactivity. However, the Florida Supreme Court's recent decisions clearly establish that defendants whose judgments and sentences of death became final prior to the U.S. Supreme Court's decision in *Ring* are not entitled to relief via retroactive application of *Hurst v. Florida* and its Florida progeny.

Because the Defendant's judgment and sentence became final on January 23, 1995, before the *Ring v. Arizona*, 536 U.S. 583 (2002) opinion was issued on June 24, 2002, the Defendant is not entitled to retroactive *Hurst* relief. See *Asay v. State*, No. SC16-102, 2016 WL 7406538 at *13 (Fla. Dec. 22, 2016).

Alternatively, even if the Court were to apply *Hurst* retroactively in this case, the Defendant would not be entitled to relief because the jury's unanimous recommendation of death rendered any error harmless. In *Hurst v. State*, the Florida Supreme Court set out the requirements for a harmless error analysis based upon a *Hurst* claim: "Where the error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, 202 So. 3d at 68, citing *Zack v. State*, 753 So. 2d 9, 20 (Fla. 2000). In *Davis v. State*, the Florida Supreme Court applied this standard and found that the jury's unanimous recommendations of death "allow us to conclude beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." 207 So. 3d 142, 174 (Fla. 2016), *reh'g denied*, SC11-1122, 2017 WL 56089 (Fla. Jan. 5, 2017); *King v. State*, SC14-1949, 2017 WL 372081 (Fla. Jan. 26, 2017); *Knight v. State*, SC14-1775, 2017 WL 411329 (Fla. Jan. 31, 2017); *Kaczmar v. State*, SC13-2247, 2017 WL 410214 (Fla. Jan. 31, 2017); *Hall v. State*, SC15-1662, 2017 WL 526509 (Fla. Feb. 9, 2017); *Jones v. State*, SC14-990, 2017 WL 823600, at *16 (Fla. Mar. 2, 2017).

The Court also reasoned as follows:

Here, the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that Davis be sentenced to death for the murders of [the victims]. The

unanimous recommendations here are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death. Accordingly, Davis is not entitled to a new penalty phase.

Davis, 207 So. 3d at 175.

Here, the jury recommended death in Defendant's case after considering a full presentation of mitigating circumstances and aggravating factors. Additionally, as in *Davis*, the jury unanimously recommended death, despite being instructed that there was no requirement to do so. Further, the Court notes that the mitigation in this particular case was neither extensive nor compelling. For the aforementioned reasons, the Court concludes, beyond a reasonable doubt, that the jury unanimously made the requisite factual findings to support a death sentence before it returned the unanimous recommendations. Accordingly, the Court finds that although *Hurst* does not apply to Defendant's case, any *Hurst* error would have been harmless.

Finally, the timeliness of the instant motion turns on whether *Hurst v. Florida* and its Florida progeny have been held to apply retroactively to Defendant. Rule 3.851 (d) provides, in relevant part, that "any motion to vacate judgment of conviction and sentence of death shall be filed by the defendant within 1 year after the judgment and sentence become final" unless "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively." Fla. R. Crim. P. 3.851. Because

Hurst and the fundamental constitutional rights relied on by Defendant have not been held to apply retroactively to defendants whose judgment and sentence became final prior to *Ring*, the instant motion is untimely under Rule 3.851(d).

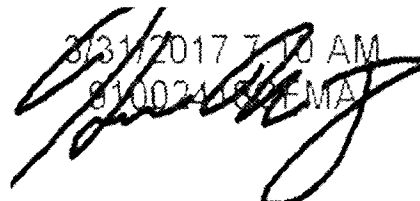
Defendant is not entitled to relief under any of his current claims, all of which depend upon a retroactive application of *Hurst*, because his judgment and sentence became final on January 23, 1995. Alternatively, the jury's unanimous recommendation of death following a full presentation of mitigating circumstances and aggravating factors renders any error harmless. Accordingly, it is:

ORDERED AND ADJUDGED that:

1. Defendant's "Second Successive Motion to Vacate Death Sentence" is hereby DENIED.

2. Defendant shall have 30 days from the date of this Order to appeal this Court's decision.

DONE AND ORDERED in chambers, in St. Johns County, Florida, on 31 day of March, 2017.



e-Signed 3/31/2017 7:10 AM
91002418CFMA

CIRCUIT JUDGE

Copies furnished to:

Stacey E. Kircher, Asst. Attorney General

Stacey.Kircher@myfloridalegal.com; CapApp@myfloridalegal.com

Rosemary Calhoun, Asst. State Attorney

calhounr@sao7.org; eservicestjohns@sao7.org

Ali A. Shakoor, Asst. CCR

shakoor@ccmr.st.fl.us; cbus03@gmail.com; support@ccmr.state.fl.us

Leahy, Matthew

From: Becky Helton <bhelton@sjccoc.us>
Sent: Friday, March 31, 2017 8:43 AM
To: Shakoor, Ali; 'CBUS03@GMAIL.COM'; Support;
'STACEY.KIRCHER@MYFLORIDALEGAL.COM'; 'CAPAPP@MYFLORIDALEGAL.COM';
ESERVICESTJOHNS@SAO7.ORG; calhounr@sao7.org
Subject: SERVICE OF COURT DOCUMENT – 91002418CFMA, STATE OF FLORIDA vs. MARQUARD,
JOHN CHRISTOPHER
Attachments: order_on_defts_2nd_successive_motion_to_vacate_death_sentence.PDF



Rebecca S. Helton

Criminal Department

Dedicated to Excellence-Committed to Improvement-Serving with Kindness

St. Johns County Clerk of Court & Comptroller

4010 Lewis Speedway, St Augustine, FL 32084

TEL: (904) 819-3600 x4333/ fax: (904) 819-3666

EMAIL: bhelton@sjccoc.us

This email is intended for the addressee(s) indicated above only. It may contain information that is privileged, confidential or otherwise protected from disclosure. Any dissemination, review, use of this email or its contents by persons other than the addressee is strictly prohibited. If you have received this email in error, please delete it immediately.

St. Johns County Clerk of Courts