

DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

BOBBY RALEIGH,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

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QUESTIONS PRESENTED--CAPITAL CASE

Context

In *Hurst v. State*, 202 So. 3d 40, 57-58 (Fla. 2016), the Florida Supreme Court held:

[A]ll the findings necessary for imposition of a death sentence are "elements" that must be found by a jury, and Florida law has long required that jury verdicts must be unanimous. Accordingly, we reiterate our holding that before the trial judge may consider imposing a sentence of death, the jury in a capital case must **unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, **unanimously find that the aggravating factors are sufficient** to impose death, **unanimously find that the aggravating factors outweigh** the mitigating circumstances, and **unanimously recommend a sentence of death**. We equally emphasize that by so holding, we do not intend to diminish or impair the jury's right to recommend a sentence of life even if it finds aggravating factors were proven, were sufficient to impose death, and that they outweigh the mitigating circumstances. See *Brooks v. State*, 762 So.2d 879, 902 (Fla.2000).**

In *Card v. Jones*, 219 So. 3d 47, 48 (Fla. 2017), the Florida Supreme Court on the basis of *Hurst v. State* vacated a death sentence and ordered a new proceeding at which a jury would have to unanimously find the elements of capital murder proven by the State beyond a reasonable doubt before a death sentence could be reimposed. The homicide at issue in *Card v. Jones* was committed in 1981. See *Card v. State*, 453 So. 2d 17, 18 (Fla. 1984).

Questions

1. Given the elements of capital murder identified by the Florida Supreme Court in *Hurst v. State* are being applied in a prosecution for a 1981 homicide, can Petitioner's death sentences remain intact given that his jury did not unanimously

find the State had proven the elements of capital murder beyond a reasonable doubt in his prosecution for two 1994 homicides?

2. Does Florida's substantive criminal law identifying the elements of capital murder as set forth in *Hurst v. State* govern in the criminal prosecution of Petitioner for two 1994 homicides and invalidate his death sentences?

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Petitioner, **BOBBY RALEIGH**, is a condemned prisoner in the State of Florida. Petitioner respectfully urges that this Honorable Court issue a writ of certiorari to review the decision of the Florida Supreme Court.

CITATION TO OPINIONS BELOW

The Florida Supreme Court's opinion appears at *Raleigh v. State*, 239 So.3d 1185 (Fla. 2018). The opinion is attached to this Petition as Attachment A.¹ Mr. Raleigh timely filed a motion for rehearing. On March 23, 2018, the Florida Supreme Court denied the motion for rehearing in light of its corrected opinion which it issued simultaneously. The order is attached to this Petition as Attachment B.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for Writ of Certiorari to the Florida Supreme Court on the basis of 28 U.S.C. § 1257. The Florida Supreme Court entered its opinion on February 28, 2018. The motion for rehearing was filed on March 15, 2018. The Florida Supreme Court issued an order denying the rehearing motion on March 23, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part:

No persons . . . shall . . . be deprived of life, liberty or property, without due process of law.

The Eighth Amendment to the Constitution of the United States provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the Constitution of the

¹The opinion originally issued on February 28, 2018, but a corrected opinion issued on March 23, 2018. The corrected opinion reflects the February 28, 2018 date.

United States provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

PROCEDURAL HISTORY

A. Prior Proceedings.

Petitioner, Bobby Raleigh, and his co-defendant, Domingo Figueroa, were charged by indictment in the Seventh Judicial Circuit Court for Volusia County, Florida, with two counts of first degree murder, one count of burglary, and one count of shooting into a building in connection with the 1994 deaths of Douglas Cox and Tim Eberlin.

Mr. Raleigh pled guilty to the two murder counts on June 6, 1995, and the State dismissed the other charges. A penalty phase proceeding was held before a jury, which recommended sentences of death by 12-0 votes on August 15, 1995. The jury was not instructed on the need to find the aggravating circumstances sufficient beyond a reasonable doubt, nor on the need to find the aggravators outweigh the mitigators beyond a reasonable doubt. On February 16, 1996, the trial judge sentenced Mr. Raleigh to death. On direct appeal, the Florida Supreme Court affirmed Mr. Raleigh's convictions and sentences. *Raleigh v. State*, 705 So. 2d 1324 (Fla. 1997).

On November 17, 1998, Mr. Raleigh filed a Rule 3.851 motion which he amended on January 19, 2001. The motion raised numerous claims of ineffective assistance of counsel at the plea stage and the penalty phase as well as *Brady/Giglio* claims. The trial court held an evidentiary hearing and denied relief, and the

Florida Supreme Court affirmed. *Raleigh v. State*, 932 So. 2d 1054 (Fla. 2006).

Mr. Raleigh also filed a petition for writ of habeas corpus on December 30, 2003, in the Florida Supreme Court, arguing his death sentences were imposed in violation of *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The Florida Supreme Court also denied this habeas petition. *Raleigh*, 932 So. 2d at 1067.

On May 10, 2007, Mr. Raleigh filed a second motion for postconviction relief in the trial court. Mr. Raleigh argued that the manner in which Florida's capital sentencing scheme operated was arbitrary and capricious and that his death sentences were unconstitutional as a result. He also argued that Florida's lethal injection protocol violated the Eighth Amendment. The trial court denied the successive motion, and the Florida Supreme Court affirmed on appeal. *Raleigh v. State*, 36 So. 3d 84 (Fla. 2010).

On November 27, 2010, Mr. Raleigh filed a third motion for postconviction relief relying principally on the then new decision in *Porter v. McCollum*, 558 U.S. 30 (2009). The trial court denied the motion, and the Florida Supreme Court affirmed. *Raleigh v. State*, 95 So. 3d 211 (Fla. 2012).

On November 14, 2011, Raleigh filed a successive petition for a writ of habeas corpus. Raleigh argued on the basis of *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), that "the factual findings made in support of Mr. Raleigh's sentences of death don't comport with due process and do not comport with the Eighth

Amendment.” On June 7, 2012, the Florida Supreme Court denied relief: “The petition for writ of habeas corpus is hereby denied on the merits.” *Raleigh v. Tucker*, 92 So. 3d 213 (Fla. 2012).

On May 4, 2007, Mr. Raleigh filed a federal habeas petition in the United States District Court for the Middle District of Florida. The petition was held in abeyance for exhaustion of state remedies and was amended on May 9, 2012. The district court denied the petition on September 19, 2013. Mr. Raleigh’s appeal was denied by the Eleventh Circuit. *Raleigh v. Sec’y Fla. Dep’t of Corr.*, 827 F.3d 938 (11th Cir. 2016).

B. Proceedings Giving Rise to this Petition.

On December 11, 2016, Mr. Raleigh filed the successive Rule 3.851 motion at issue in this petition. Subsequently, he was allowed to amend the motion. He raised claims relying on *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). In particular, Mr. Raleigh argued that the Florida Supreme Court in *Hurst v. State* had found that the statutorily defined facts necessary for a death sentence to be imposed were elements of capital murder. He argued that the statutory construction set forth in *Hurst v. State* warranted reconsideration of previously heard claims.² Mr. Raleigh also

²Many of Mr. Raleigh’s previously presented claims arose from evidence of a statement by the co-defendant, Figueroa, that he killed one of the victims. This admission by co-defendant was not heard by Mr. Raleigh’s jury who only heard a contrary statement from co-defendant blaming Mr. Raleigh for both homicides. Mr. Raleigh’s previously presented claims also included the fact that at Figueroa’s subsequent penalty phase the State presented evidence and argued that Figueroa was the

(continued...)

argued that because his jury was told its recommendation was "advisory" in nature and the sentencing decision rested with the judge, the unanimous death recommendations reflected the bias in favor of death when the jury's sense of responsibility is diminished. See *Caldwell v. Mississippi*, 472 U.S. 320 (1985).

Mr. Raleigh's claims were orally argued at a case management conference. Mr. Raleigh argued that the statutory construction set forth in *Hurst v. State* was confirmed when Chapter 2017-1, Laws of Florida was enacted on March 13, 2017. The circuit court denied relief. A timely notice of appeal was filed.

After the record was filed, the Florida Supreme Court issued an order on November 15, 2017 directing Mr. Raleigh to show cause "why the trial court's order should not be affirmed in light of th[e Florida Supreme] Court's decision in *Hitchcock v. State*, SC17-445."

Mr. Raleigh argued that on the basis of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), his death sentence could not stand. In *Hurst v. State*, the Florida Supreme Court addressed the old version of § 921.141 in effect at the time of the homicides at issue in Mr. Raleigh's case and concluded:

Thus, before a sentence of death may be considered by the trial court in Florida, the jury must find the existence of the aggravating factors proven beyond a reasonable doubt, that the aggravating factors are

²(...continued)

dominant player who killed one victim and ordered Mr. Raleigh, described as a "drunken boob" to kill the other one. This conflicted with the evidence and argument presented at Mr. Raleigh's penalty phase, and it conflicted with the judge's written findings when imposing a death sentence.

sufficient to impose death, and that the aggravating factors outweigh the mitigating circumstances.

Hurst v. State, 202 So. 3d at 53.³ Because these were the statutorily defined facts necessary to increase the range of punishment to include death, proving them was necessary **"to essentially convict a defendant of capital murder."** These facts were thus elements of capital murder. *Id.* at 53-54.

In *Hurst v. State*, the Florida Supreme Court held:

[A]ll the findings necessary for imposition of a death sentence are "elements" that must be found by a jury, and Florida law has long required that jury verdicts must be unanimous. Accordingly, we reiterate our holding that before the trial judge may consider imposing a sentence of death, the jury in a capital case must **unanimously and expressly find all the aggravating factors** that were proven beyond a reasonable doubt, **unanimously find that the aggravating factors are sufficient** to impose death, **unanimously find that the aggravating factors outweigh** the mitigating circumstances, and **unanimously recommend a sentence of death**. We equally emphasize that by so holding, we do not intend to diminish or impair the jury's right to recommend a sentence of life even if it finds aggravating factors were proven, were sufficient to impose death, and that they outweigh the mitigating circumstances. See *Brooks v. State*, 762 So.2d 879, 902 (Fla.2000). As the relevant jury instruction states: "Regardless of your findings ... you are neither compelled nor required to recommend a sentence of death." Fla. Std. Jury Instr. (Crim.) 7.11 Penalty

³The Florida Supreme Court explained that the presence of these specific facts was longstanding:

the imposition of a death sentence in Florida has in the past required, and continues to require, additional factfinding that now must be conducted by the jury. As the Supreme Court long ago recognized in *Parker v. Dugger*, 498 U.S. 308 (1991), under Florida law, "The death penalty may be imposed only where sufficient aggravating circumstances exist that outweigh mitigating circumstances." *Id.* at 313 (emphasis added) (quoting § 921.141(3), Fla. Stat. (1985)).

Hurst v. State, 202 so. 3d at 53.

Proceedings—Capital Cases. Once these critical findings are made unanimously by the jury, each juror may then “exercis[e] reasoned judgment” in his or her vote as to a recommended sentence. See *Henyard v. State*, 689 So.2d 239, 249 (Fla.1996) (quoting *Alvord v. State*, 322 So.2d 533, 540 (Fla.1975)).

Id. at 57-58. This was the holding of *Hurst v. State*.

Mr. Raleigh argued to the Florida Supreme Court that *Hurst v. State* identified the statutory elements that had to have been proven beyond a reasonable doubt:

* * * If death is to be imposed, unanimous jury sentencing recommendations, when made in conjunction with the other critical findings unanimously found by the jury, provide the highest degree of reliability in meeting these constitutional requirements in the capital sentencing process.

Hurst v. State, 202 So. 3d at 60. However as he also argued to the Florida Supreme Court, Mr. Raleigh’s jury was not instructed that these elements had to be proven by the State beyond a reasonable doubt. The holding in *Hurst v. State* implicated *In re Winship*, 397 U.S. 358 (1970):

Winship presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.

Jackson v. Virginia, 443 U.S. 307, 316 (1979).

Mr. Raleigh also relied on *Fiore v. White*, 531 U.S. 225, 226 (2001), in his argument to the Florida Supreme Court. He argued that just as occurred in *Fiore*, the Florida Supreme Court in *Hurst v. State* had identified the elements of the criminal offense from the plain language of the statute. Accordingly, the elements so identified dated to the enactment of the statute.

Mr. Raleigh also argued to the Florida Supreme Court that the resentencing it ordered in *Card v. Jones*, 219 So. 3d 47 (Fla. 2017), would functionally be a trial as to whether Mr. Card was guilty of capital murder. The order granting “new penalty phase” had effectively reopened the issue of the defendant’s guilt as to a homicide committed in 1981. See *Card v. State*, 453 So. 2d 17, 18 (Fla. 1984). Others have received the benefit of *Hurst v. State* in criminal prosecutions for homicides predating those in Mr. Raleigh’s case. See also *Johnson v. State*, 205 So. 3d 1285 (Fla. 2016);⁴ *Armstrong v. State*, 211 So. 3d 864, 865 (Fla. 2017);⁵ *Anderson v. State*, 220 So. 3d 1133, 1152 (Fla. 2017).⁶

In its February 28, 2018 opinion affirming the denial of Mr. Raleigh’s 3.851 motion, the Florida Supreme Court did not specifically address or analyze Mr. Raleigh’s argument premised upon the statutory construction set forth in *Hurst v. State*. The claim was simply denied as meritless.

Mr. Raleigh focused on this failure in his March 15, 2018 motion for rehearing.

In the March 23, 2018 denial of the rehearing motion, the Florida Supreme Court did not address or analyze Mr. Raleigh’s argument.

⁴Johnson was convicted of 3 first degree murders committed in 1981. *Johnson v. State*, 438 So. 2d 774, 775 (Fla. 1983).

⁵Armstrong was convicted of first degree murder for a 1990 homicide. *Armstrong v. State*, 642 So. 2d 730 (Fla. 1994).

⁶Anderson was convicted of a first degree murder for a 1994 homicide. *Anderson v. State*, 841 So. 2d 390, 394 (Fla. 2003).

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI REVIEW IN ORDER TO CONSIDER THE EFFECT ON MR. RALEIGH'S DEATH SENTENCE OF THE FLORIDA SUPREME COURT'S READING OF THE FLORIDA CAPITAL SENTENCING STATUTE AS IDENTIFYING ELEMENTS OF CAPITAL MURDER.

Identifying the facts or elements necessary to increase the authorized punishment is a matter of substantive law. *Alleyne v. United States*, 570 U.S. 99, 113-14 (2013) ("Defining facts that increase a mandatory statutory minimum to be **part of the substantive offense** enables the defendant to predict the legally applicable penalty from the face of the indictment.") (emphasis added).

A court decision identifying **the elements of a statutorily defined criminal offense constitutes substantive law** that dates back to the enactment of the statute. *Bousley v. United States*, 523 U.S. 614, 625 (1998) (Stevens, J., concurring in part and dissenting in part) ("This case does not raise any question concerning the possible retroactive application of a new rule of law, *cf. Teague v. Lane*, 489 U.S. 288 (1989), because our decision in *Bailey v. United States*, 516 U.S. 137 (1995), did not change the law. **It merely explained what § 924(c) had meant ever since the statute was enacted.** The fact that a number of Courts of Appeals had construed the statute differently is of no greater legal significance than the fact that 42 U.S.C. § 1981 had been consistently misconstrued prior to our decision in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989).") (emphasis added). "A judicial construction of a statute is an authoritative statement of what the statute meant **before as well as after the decision** of

the case giving rise to that construction.” *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994) (emphasis added).

In *Fiore v. White*, 531 U.S. 225, 226 (2001), this Court addressed the import of the Due Process Clause in the context the substantive law defining a criminal offense:

We granted certiorari in part to decide when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral review.

Under *Winship*, each element of a criminal offense must be found proven beyond a reasonable doubt.

Because of the widespread problem arising in Florida capital cases in light of the statutory construction set forth in *Hurst v. State*, this Court should issue the writ.

Certiorari review is warranted here to determine whether the Due Process Clause requires the substantive criminal law set forth in *Hurst v. State* and applied to a 1981 homicide in *Card v. Jones* to also be applied to Mr. Raleigh’s criminal prosecution for two 1994 homicides.

CONCLUSION

Based on the foregoing, Petitioner submits that certiorari review is warranted to review the decision of the Florida Supreme Court in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing petition has been furnished by US Mail, first class postage prepaid, to Marilyn Muir Beccue, Attorney General’s Office, 3507 E. Frontage Rd, Ste. 200, Tampa, FL 33607, on this 21st day of June, 2018.

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