

CAPITAL CASE

No. _____

IN THE
Supreme Court of the United States

ROBERT DWAYNE MORRIS

Petitioner,

v.

STATE OF FLORIDA

Respondents.

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

APPENDIX

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Appendix A: The opinion of the Circuit Court in and for Polk County, Florida denying Mr. Morris's successive motion for relief under Florida Rule Crim. Pro. 3.851 (Unreported) (March 9, 2017).

Appendix B: Order to Show Cause from Florida Supreme Court, SC17-873 (September 25, 2017).

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APPENDIX

A

**IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

v.

CASE NO.: CF94-3961A-XX

**ROBERT DWAYNE MORRIS,
Defendant.**

**CORRECTED ORDER DENYING SECOND
SUCCESSIVE MOTION TO VACATE**

THIS MATTER is before the Court on the Defendant's "Second Successive Motion To Vacate Death Sentence," (the "Motion"), filed on January 5, 2017; and the Defendant's "Notice Of Scrivener's Error In Second Successive Motion To Vacate Death Sentence," filed on January 10, 2017; the "State's Answer To Defendant's Second Successive Motion For Postconviction Relief," filed on January 25, 2017; the Defendant's "Notice of Supplemental Authority," filed on February 13, 2017; the "State's Notice Of Supplemental Authority," filed on February 14, 2017; and "Exhibit A Second Successive Motion To Vacate Death Sentence Letter from Appellate Counsel, Steven Bolotin to Mr. Morris –dated February 25, 2002," filed on February 17, 2017. The Court, after reviewing the Motion, the State's Answer, the Notices of Supplemental Authority, the Defendant's Exhibit A, the court files, applicable law, and hearing argument of counsel at a Case Management Conference held on February 14, 2017 and February 17, 2017, finds as follows:

The Defendant previously sought relief by filing a motion, pursuant to Rule 3.851, Fla. R. Crim. P. An "Order Denying Defendant's 3.851 Motion For Post Conviction Relief," was filed on July 12, 2004. That Order was appealed to the Florida Supreme Court, who affirmed the Trial Court's denial of postconviction relief on April 20, 2016, rehearing denied June 2, 2006. See Morris v. State, 931 So.2d 821 (Fla. 2006).

The Defendant has raised the following five Claims for relief in his present Motion:

CLAIM 1

IN LIGHT OF *HURST*, DEFENDANT'S DEATH SENTENCE VIOLATES THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

CLAIM 2

UNDER *HURST V. STATE*, DEFENDANT'S DEATH SENTENCE VIOLATES THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

CLAIM 3

THIS COURT SHOULD VACATE MR. MORRIS'S DEATH SENTENCE BECAUSE THE FACT-FINDING THAT SUBJECTED HIM TO A DEATH SENTENCE WAS NOT PROVEN BEYOND A REASONABLE DOUBT.

CLAIM 4

IN LIGHT OF *HURST*, *PERRY V. STATE* AND *HURST V. STATE*, DEFENDANT'S DEATH SENTENCE VIOLATES THE FLORIDA CONSTITUTION, INCLUDING ARTICLE I, SECTIONS 15 AND 16, AS WELL AS FLORIDA'S HISTORY OF REQUIRING A UNANIMOUS JURY VERDICT.

CLAIM 5

THE DECISIONS IN *HURST V. STATE* AND *PERRY V. STATE* ARE NEW LAW THAT WOULD GOVERN AT A RESENTENCING AND MUST BE PART OF THE SECOND PRONG ANALYSIS OF MR. MORRIS'S PREVIOUSLY PRESENTED NEWLY DISCOVERED EVIDENCE CLAIM AND *STRICKLAND* CLAIMS. THE NEW LAW, DUE PROCESS PRINCIPLES, AND THE EIGHTH AMENDMENT ALL REQUIRE THIS COURT TO REVISIT MR. MORRIS'S PREVIOUSLY PRESENTED CLAIMS AND DETERMINE WHETHER THE EVIDENCE PRESENTED TO SUPPORT EACH CLAIM AND ALL THE OTHER ADMISSIBLE EVIDENCE AT A FUTURE RESENTENCING WOULD

PROBABLY RESULT IN A LIFE SENTENCE IN LIGHT OF THE NEW LAW THAT WOULD GOVERN AT A RESENTENCING.

The Defendant's claims are all based upon the ruling by the United States Supreme Court in Hurst v. Florida, 136 S.Ct. 616 (2016), and the ruling by the Florida Supreme Court in Hurst v State, 202 So.3d 40 (Fla. 2016). In Hurst v. Florida, the United States Supreme Court found that Florida's Capital sentencing scheme was unconstitutional because the judge, not the jury, made the necessary findings of fact to impose a death sentence. On page 44 of Hurst v. State, the Florida Supreme Court stated,:

As we will explain, we hold that the Supreme Court's decision in *Hurst v. Florida* requires that all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury. We reach this holding based on the mandate of *Hurst v. Florida* and on Florida's constitutional right to jury trial, considered in conjunction with our precedent concerning the requirement of jury unanimity as to the elements of a criminal offense. In capital cases in Florida these specific finding required to be made by the jury include the existence of each aggravating factor that has been proven beyond a reasonable doubt, the finding that the aggravating factors are sufficient, and the finding that the aggravating factors outweigh the mitigating circumstances. We also hold, based on Florida's requirement for unanimity in jury verdicts, and under the Eighth Amendment to the United States Constitution, that in order for the trial court to impose a sentence of death, the jury's recommended sentence of death must be unanimous.

Pursuant to Rule 3.851(d)(1), Fla R. Crim. P., "[a]ny motion to vacate judgment of conviction and sentence of death shall be filed by the defendant with 1 year after the judgment and sentence become final." Rule 3.851(d)(2)(B) provides for an exception to the 1 year time limitation if the motion alleges, "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively."

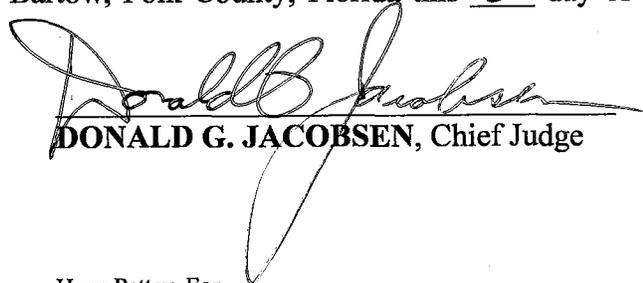
The Florida Supreme Court held in Asay v. State, 41 Fla. L. Weekly S646, 2016 WL 7406538 (Fla. 2016) that the Hurst rulings do not apply retroactively to defendants whose sentences were final when the United States Supreme Court issued its opinion in Ring v. Arizona, 536 U.S. 584 (2002). Ring was issued on June 24, 2002. See also Bogle v. State, 2017 WL 526507, (Fla. February 9, 2017) and Gaskin v. State, 2017 WL 224772 (Fla. January 19, 2017).

The Defendant was tried and found guilty of the First-Degree Murder of Violet Livingston, as well as being found guilty on a Count of Burglary and a Count of Armed Robbery. The jury recommended a sentence of death on the Count of First-Degree Murder by a vote of 8 to 4. The Honorable Robert Young, Circuit Judge, imposed a sentence of death on April 30, 1999 for the murder of Violet Livingston. The Defendant's judgment and sentences in this case were affirmed on appeal by the Florida Supreme Court on February 21, 2002 in Morris v. State, 811 So.2d 661 (Fla. 2002). The mandate in that case was issued on March 14, 2002.

Based on the above, the Court finds that Hurst does not apply retroactively to Mr. Morris. His five Claims for relief are predicated on Hurst, and all five claims are denied.

Therefore, it is **ORDERED AND ADJUDGED** that the Defendant's "Second Successive Motion To Vacate Death Sentence," is **DENIED**. The Defendant has thirty (30) days to appeal this Order to the Florida Supreme Court.

DONE AND ORDERED in Bartow, Polk County, Florida this 8th day of March, 2017.


DONALD G. JACOBSEN, Chief Judge

cc:
Robert Dwayne Morris #550026
Union Correctional Institution
7819 N.W. 228th Street
Raiford, FL 32026-4000

Hope Pattey, Esq.
Victoria Avalon, Esq.
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I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the Clerk of the Circuit Court of Polk County, Florida, and that I have furnished copies of this order and its attachments to the above-listed on this 9th day of March, 2017.

CLERK OF THE CIRCUIT COURT

By:  _____
Deputy Clerk

APPENDIX

B

Supreme Court of Florida

MONDAY, SEPTEMBER 25, 2017

CASE NO.: SC17-873
Lower Tribunal No(s):
531994CF003961A1XXXX

ROBERT D. MORRIS

vs. STATE OF FLORIDA

Appellant

Appellee

Appellant shall show cause on or before Monday, October 16, 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 Thursday, October 26, 2017, limited to no more than 15 pages. Appellant may file a reply to the Respondent's reply on or before Monday, November 6, 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



ks
Served:

ALI ANDREW SHAKOOR
SCOTT A. BROWNE
ANN MARIE MIRIALAKIS

APPENDIX

C

236 So.3d 324
Supreme Court of Florida.

Robert D. MORRIS, Appellant,
v.
STATE of Florida, Appellee.

No. SC17–873
|
[January 26, 2018]

Synopsis

Background: Years after his death sentence was affirmed on direct appeal, [811 So.2d 661](#), defendant filed a motion for collateral relief. The Circuit Court, Polk County, No. 531994CF003961A1XXXX, [Donald G. Jacobsen, J.](#), 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.

West Headnotes (1)

[1] **Courts**

🔑 **In general; retroactive or prospective operation**

Florida Supreme Court decision in *Hurst v. State*, [202 So.3d 40](#), in which Court held that a jury to was required to unanimously find that aggravating factors were sufficient to impose death, did not apply retroactively to defendant’s death sentence; defendant was sentenced to death following a jury’s recommendation for death by a vote of eight to four, and his sentence became final approximately 14 years before

Hurst was issued.

Cases that cite this headnote

An Appeal from the Circuit Court in and for Polk County, [Donald G. Jacobsen](#), Judge—Case No. 531994CF003961A1XXXX

Attorneys and Law Firms

[James Viggiano, Jr.](#), Capital Collateral Regional Counsel, [Ann Marie Mirialakis](#), and Ali Andrew Shakoor, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida, for Appellant

[Pamela Jo Bondi](#), Attorney General, and [Scott A. Browne](#), Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

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

Morris’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 Morris’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](#), Morris responded to this Court’s order to show *325 cause arguing why [Hitchcock](#) should not be dispositive in this case.

After reviewing Morris’s response to the order to show cause, as well as the State’s arguments in reply, we conclude that Morris is not entitled to relief. Morris was sentenced to death following a jury’s recommendation for death by a vote of eight to four, and his sentence of death became final in May 2002. [Morris v. State](#), [811 So.2d 661, 664](#) (Fla. 2002). Thus, [Hurst](#) does not apply

retroactively to Morris's sentence of death. [See Hitchcock, 226 So.3d at 217](#). Accordingly, we affirm the denial of Morris's motion.

The Court having carefully considered all arguments raised by Morris, 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

236 So.3d 324, 43 Fla. L. Weekly S45

APPENDIX

D

ORIGINAL

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

Case No.: CF94-396A1-XX

ROBERT DWAYNE MORRIS,

Defendant.

SENTENCING PROCEEDINGS

BEFORE: HONORABLE ROBERT A. YOUNG
CIRCUIT JUDGE

Counsel for State of Florida:

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Counsel for Defendant:

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Assistant Public Defender
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CRIMINAL APPEAL SECTION

OCT 25 1999

RICHARD M. WEISS
CLERK CIRCUIT COURT

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Lori Miller



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I N D E X

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1
2 IN THE CIRCUIT COURT OF THE TENTH JUDICIAL
3 CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

4 STATE OF FLORIDA,

5 Plaintiff,

6 vs.

Case No.: CF94-396A1-XX

7 ROBERT DWAYNE MORRIS,

8 Defendant.

9 SENTENCING PROCEEDINGS

10
11 THIS CAUSE came on for hearing before the
12 Honorable Robert A. Young, Circuit Judge, in the
13 Polk County Courthouse, Courtroom 7B, Bartow,
14 Florida, on June 30, 1999, commencing at 8:30 a.m.

15 THEREUPON, the following proceedings were
16 had and taken:

17 THE COURT: Good morning.

18 We'll start by thanking the lawyers in
19 State versus Robert Morris for their excellent
20 professional efforts on behalf of the State
21 and on behalf of the defense, and their
22 scholarship that has helped me through this
23 very difficult case, and I appreciate it on
24 both sides. I also want to take this
25 opportunity to publically thank the members of

1 the jury for the twenty days they sat with us.
2 It's been very difficult and AN emotional
3 experience for them, and we all owe them a
4 debt of gratitude.

5 Of course, the sentencing decision is
6 ultimately mine, and, I have, therefore,
7 repeatedly reviewed all of the evidence and
8 weighed the aggravating circumstances offered
9 by the State against the mitigating
10 circumstances suggested by the defense,
11 together with any other possible mitigators
12 which are contained in the record.

13 Based on that review, I have filed with
14 the clerk and will make available in just a
15 moment through sentencing, in the ten pages I
16 have expressly evaluated each mitigating
17 circumstance, every aggravating circumstance,
18 and I've reviewed the mitigating circumstances
19 both together and individually.

20 I find all five aggravators that are
21 proposed by the State to be proven beyond a
22 reasonable doubt, but I've excluded one of
23 them from consideration completely, and I've
24 only accorded moderate weight to two of them.

25 I have accorded great weight to the fact

1 that the murder was committed for financial
2 gain and that the murder was especially
3 heinous, atrocious or cruel.

4 In considering the mitigating factors,
5 the State has agreed that 16 of them were
6 established. I believe I found some 20
7 mitigators to exist. I wasn't able to accord
8 any more than moderate or slight or little
9 weight to most of them except that the
10 evidence concerning Mr. Morris' background was
11 clearly entitled to great weight.

12 Evidence of the defendant's chronic brain
13 syndrome was accorded moderately. The details
14 of the evaluation of the evidence that I have
15 done are contained in the sentencing order,
16 and it's my duty to conclude, as did the jury,
17 that the aggravating circumstances outweigh
18 the mitigating factors by a substantial
19 margin.

20 Robert Morris, when you entered Mrs.
21 Livingston's apartment to steal her property,
22 you forfeited your right to live among us as a
23 free man. When you committed the heinous and
24 atrocious and cruel murder inside, you
25 forfeited your right to live at all.

1 The scales of justice in this case
2 unquestionably tilt to the side of death, and,
3 therefore, it is the judgment of the law and
4 sentence of the Court that you, Robert Dwayne
5 Morris, are sentenced to die for the murder in
6 the first degree of Violet Livingston, and you
7 are hereby sentenced to death.

8 It is further the order of the Court that
9 you are committed to the custody of the
10 Department of Corrections, to be detained on
11 death row and securely held there until the
12 sentence can be carried out according to law.

13 May God have mercy on your soul.

14 MR. DIMMIG: Now, may the record reflect
15 that I am now delivering by hand to the clerk
16 a notice of appeal to the Florida Supreme
17 Court for filing.

18 THE COURT: Thank you, sir.

19 Court's in recess for five minutes.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF POLK)

I, Lori Miller, Deputy Official Court Reporter, do hereby certify that I was authorized to and did report in Stenotype and electronically the foregoing proceedings and evidence in the captioned case and that the foregoing pages constitute a true and correct transcription of my recordings thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 22nd day of October, 1999, at Lakeland, Polk County, Florida.



Lori Miller
Deputy Official Court Reporter