

235 So.3d 308

Supreme Court of Florida.

Joshua D. NELSON, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-939

|

[January 31, 2018]

Synopsis

Background: Defendant, whose sentence of death was affirmed on direct appeal, [748 So.2d 237](#), filed a motion for collateral relief. The Circuit Court, Lee County, No. 361995CF000911000ACH, [Joseph C. Fuller, Jr., 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 unanimous recommendation for death, and his sentence became final approximately 16 years before *Hurst* was issued.

Cases that cite this headnote

***309** An Appeal from the Circuit Court in and for Lee County, [Joseph C. Fuller, Jr.](#), Judge—Case No. 361995CF000911000ACH

Attorneys and Law Firms

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

Opinion

PER CURIAM.

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

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

After reviewing Nelson's response to the order to show cause, as well as the State's arguments in reply, we conclude that Nelson is not entitled to relief. Nelson was sentenced to death following a jury's unanimous recommendation for death. [Nelson v. State, 748 So.2d 237, 240 \(Fla. 1999\)](#). His sentence of death became final in 2000. [Nelson v. Florida, 528 U.S. 1123, 120 S.Ct. 950, 145 L.Ed.2d 825 \(2000\)](#). Thus, [Hurst](#) does not apply retroactively to Nelson's sentence of death. See [Hitchcock](#),

[226 So.3d at 217](#). Accordingly, we affirm the denial of Nelson's motion.

The Court having carefully considered all arguments raised by Nelson, 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

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