

Supreme Court of Florida

No. SC17-1509

ERIC SCOTT BRANCH,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 22, 2018]

PER CURIAM.

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

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

After reviewing Branch's response to the order to show cause, as well as the State's arguments in reply, we conclude that Branch is not entitled to relief.

Branch was sentenced to death following a jury's recommendation for death by a vote of ten to two. Branch v. State, 685 So. 2d 1250, 1252 (Fla. 1996). Branch's sentence of death became final in 1997. Branch v. Florida, 520 U.S. 1218 (1997).

Thus, Hurst does not apply retroactively to Branch's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Branch's motion.

The Court having carefully considered all arguments raised by Branch, 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 Escambia County,
Edward Phillips Nickinson III, Judge - Case No.
171993CF000870XXXAXX

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