

**IN THE SUPREME COURT OF FLORIDA**

**STATE OF FLORIDA**

**Appellant,**

**v.**

**WILLIAM FRANCES SILVIA,**

**Appellee.**

**Case No. SC17-337**

**ON APPEAL FROM THE CIRCUIT COURT  
OF THE EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR SEMINOLE COUNTY, FLORIDA**

**INITIAL BRIEF OF APPELLANT**

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## **PRELIMINARY STATEMENT**

Appellant, the State of Florida and the prosecutor in the trial court, will be referenced in this brief as Appellant, the prosecution, or the State. Respondent Silvia, the defendant in the trial court, will be referenced in this brief as Appellee or by proper name.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

## **STATEMENT OF THE CASE AND FACTS**

William Silvia was convicted of the September 22, 2006, first-degree murder of his estranged wife, Patricia Silvia, and the attempted first-degree murder of Patricia's mother, Betty Woodard. *Silvia v. State*, 60 So. 3d 959, 963 (Fla. 2011). Silvia fired five shots into a carport and home where people had gathered for a cookout. Silvia, who had been fired on the day of the murder, went to the home and spoke briefly to his estranged wife before going to his truck and retrieving a shotgun. *Id.* at 963-4. After convicting Silvia, the jury recommended a death sentence by a vote of eleven to one. *Id.* at 966. This Court confirmed the conviction and sentence on direct appeal. *Id.* at 978.

The Defendant waived postconviction proceedings and counsel. *Silvia v. State*, 2013 WL5035694 at \*1 (Fla. Sept. 11, 2013). After conducting a hearing and the required colloquy on June 26, 2012, the trial court entered an order finding that

there were no reasonable grounds to believe that Silvia was not mentally competent for purposes of the hearing and that Silvia's waiver was knowing, intelligent, and voluntary. *Id.* This Court affirmed the trial court's dismissal of Silvia's postconviction proceedings and the discharging of his counsel. *Id.* at \*2.

On January 6, 2017, Silvia filed a motion to vacate his death sentence following the rulings in *Hurst v. Florida*, 136 S. Ct. 616 (2016), *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) and *Perry v. State*, 210 So. 3d 630 (Fla. 2016). Silvia argued that his Sixth Amendment rights were violated because his jury verdict did not include any findings of fact, that there was no determination of what aggravators were found, if any aggravators were found unanimously or if the jurors unanimously found that the aggravators outweighed the mitigating circumstances. (R 24-5). Silvia also argued violations of his Eighth Amendment rights and the Florida Constitution. (R 28, 30).

In response, the State argued that Silvia waived his right to file any postconviction motions when he waived his postconviction counsel and proceedings in 2012. (R 49). The State cited the following from this Court's affirmance of the dismissal of his postconviction proceedings:

The transcript reflects that Silvia understood the consequences of waiving postconviction counsel and proceedings, and he understood that **his right to pursue postconviction proceedings would be forever lost**. The transcript further reflects that Silvia understood that

if the court granted his request to discharge his attorneys and waive postconviction proceedings, he would become warrant-eligible-that is, the governor could sign a warrant for his execution. Silvia also indicated that he understood that **his waiver of postconviction proceedings was permanent and that he could not change his mind in the future.**

In addition, Silvia indicated that he understood that by waiving postconviction proceedings early in the process-before a motion was filed-he **was losing permanently his right to take advantage of any changes that may occur in the law**, that he was waiving his right to federal review, and that because his attorneys had not yet completed their discovery, it was unknown what issues could be raised. Silvia acknowledged that he understood everything his attorneys had done to date and that his attorneys could discover information that would be beneficial to him in postconviction. Silvia indicated that he understood that the issues in his case were not fully developed, that his attorneys could not proceed further in their investigation without his cooperation, and that his attorneys could discover information that would be beneficial to him. He nevertheless indicated that he did not wish his attorneys to proceed with any further discovery and that he was voluntarily waiving his postconviction counsel and proceedings.

(R 49-50) (citing *Silvia*, at \*1-2) (emphasis in original).

The State argued that each of Silvia's claims should be denied because he knowingly gave up the right to make the claims that he was pursuing and that it would be a waste of judicial resources to allow him to pursue claims he had already waived. (R 50).

A Case Management Conference was held on February 7, 2017, before Circuit Judge Donna McIntosh. (R 85). The State filed as supplemental authority *Trease v. State*, 41 So. 3d 119 (Fla. 2010) and *James v. State*, 974 So. 2d 365 (Fla.

2008). (R 71 – 84). At the hearing, the State argued that Silvia was told five years ago that he would permanently lose his post-conviction rights and could not change his mind in the future. (R 420-1). The State pointed out that Silvia indicated that he understood that and that he was permanently losing his right to take advantage of any changes that may occur in the law. (R 421). In addition, the State referenced the fact that Silvia had not argued that there were any problems with the validity of his waiver. (R 421). The State argued that the transcript from the prior hearing revealed that Silvia’s counsel in 2012 stated that he could not in good faith argue that Silvia was incompetent. (R 420).

At the Case Management Conference, Silvia’s counsel argued that he had previously waived going forward on his ineffective assistance of counsel claim but not his *Ring*<sup>1</sup> claim. (R428). Counsel for Silvia supplied as supplemental authority and cited at the hearing several cases involving non-unanimous jury recommendations for which this Court granted a new penalty phase. (R 87 – 370).

On Feb. 17, 2017, the circuit judge granted Silvia’s motion and vacated his death sentence. (R 371 - 6). In regards to the State’s argument that Silvia waived his right to seek relief, the circuit judge stated:

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<sup>1</sup> *Ring v. Arizona*, 536 U.S. 584 (2002). Silvia pursued a *Ring* claim on direct appeal. *See Silvia*, 60 So. 3d at 978. The claim was denied. *Id.*

As an initial matter, the State asserts that the Defendant should be precluded from seeking relief under the *Hurst* rulings because he waived his initial postconviction proceedings in this case. In support of its position, the State cites to *James v. State*, 974 So. 2d 365 (Fla. 2008) and *Trease v. State*, 41 So. 3d 119 (Fla. 2010). However, both of those cases involved a defendant's attempt to reinstate his postconviction proceedings after validly waiving those proceedings, whereupon the Florida Supreme Court concluded that a "mere change of mind is an insufficient basis for setting aside a previous waiver." *James*, 974 So. 2d at 366,368; *Trease*, 41 So. 3d at 120-21. In the case at bar, the Defendant is not seeking to reinstate his previously waived postconviction proceedings because he has changed his mind. Rather he is seeking to avail himself of a newly established constitutional right, which has been held to apply retroactively. The Defendant could not knowingly and voluntarily waive a right he did not possess at the time of the waiver. Therefore, the Court finds that he is not precluded from seeking *Hurst* relief based upon his waiver of his initial postconviction proceedings.

(R 372-3).

The State subsequently filed a Notice of Appeal in response to the trial court's ruling. (R 381-2).

### **SUMMARY OF ARGUMENT**

The trial court erred in granting Silvia's motion to vacate death sentence because he had knowingly, voluntarily and intelligently waived his right to pursue postconviction claims.

### **ARGUMENT**

In 2012, Silvia knowingly and voluntarily waived his right to make any post-conviction claims. The transcript from the prior proceeding illustrated that Silvia

was placed on notice that he was losing permanently his right to take advantage of any changes that may occur in the law and that he could not change his mind in the future. Now, five years later, the Appellee seeks to exercise a right that he validly waived.

The trial court's ruling on this issue was incorrect. Subsequent legal developments do not make prior waivers involuntary. This Court noted in *Mullens v. State*, 197 So. 3d 16, 39 (Fla. 2016), that “[a] subsequent change in the law regarding the right to jury sentencing did not render that initial waiver [of a penalty-phase jury] involuntary.” *Id.* Although *Mullens* was a case on direct appeal, this Court made a similar ruling in *Brant v. State*, 197 So. 3d 1051 (Fla. 2016), which involved postconviction proceedings. *Id.* at 1079.

In addition, the United States Supreme Court has rejected arguments that a defendant's guilty plea was involuntary because it was made based upon a law that was later changed. In *McMann v. Richardson*, 397 U.S. 759, 773-4 (1970), the defendants argued that they should be allowed to withdraw guilty pleas because of a new court ruling that was applied retroactively to defendants who had not waived their right to trial. *Id.* at 773. “What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid

when made, and be given another choice between admitting their guilt and putting the State to its proof.” *Id.* The Court noted that “[i]t is no denigration of the right to trial to hold that **when the defendant waives his state court remedies** and admits his guilt, **he does so under the law then existing**; further, he assumes the risk or ordinary error in either his or his attorney's assessment of the law and facts.” *Id.* at 774. (emphasis added). The Court went on to state that “[a]lthough he might have pleaded differently had later decided cases then been the law, he is bound by his plea and his conviction unless he can allege and prove serious derelictions on the part of counsel sufficient to show that his plea was not, after all, a knowing and intelligent act.” *Id.* See also *Brady v. United States*, 397 U.S. 742, 757 (1970) (there’s no requirement in the Constitution that a defendant must be permitted to withdraw his guilty plea simply because it later develops that the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions); *United States v. Vela*, 740 F.3d 1150 (7th Cir. 2014) (holding that a defendant’s waiver of his right to appeal was not rendered involuntary by subsequent Supreme Court ruling).

When Silvia waived his right to postconviction proceedings, he did so under the law that existed in 2012. Silvia entered into the waiver with the knowledge that he would permanently lose the benefit of any subsequent changes in the law.

As a result, he was under notice that the law could change in the future, that his waiver of postconviction proceedings was permanent and that he could not change his mind in the future.

In *James*, this Court concluded “that a mere change of mind is an insufficient basis for setting aside a previous waiver.” *James*, 974 So. 2d at 368. In *Trease*, this Court noted the frequency in which Trease changed his mind about his postconviction proceedings.

If this Court were to allow Trease to reinstate his postconviction proceedings based upon a mere change of mind, there would be nothing to stop Trease from changing his mind again at a later date. In fact, based upon Trease's history, this is a likely scenario. Then, the trial court would be required to conduct another *Durocher* hearing because Trease has a right to waive postconviction counsel and proceedings. Thereafter, Trease could again change his mind, and the trial court would be required to reinstate the postconviction proceedings. The cycle could continue indefinitely. Cf. *Waterhouse v. State*, 596 So.2d 1008, 1014 (Fla.1992) (“[A] defendant may not manipulate the proceedings by willy-nilly leaping back and forth between the choices [of self-representation and appointed counsel].” (quoting *Jones v. State*, 449 So.2d 253, 259 (Fla.1984))).

*Trease*, 41 So. 3d at 126.

Silvia should not be allowed to change his mind and benefit from *Hurst* when he was fully aware of the consequences of his actions at the time of the waiver of his postconviction rights, including the possibility that the law could change in the future. He made a knowing, intelligent and voluntary decision to make a valid waiver with the knowledge that the future development of the law

was uncertain. “Judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time.” *Brady*, 397 U.S. at 756-7.

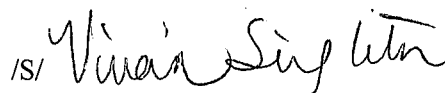
Although Silvia cited before the trial court numerous cases in which this Court granted a new penalty phase when the jury’s death recommendation was non-unanimous, none of those cases involved defendants who had waived postconviction proceedings.

### **CONCLUSION**

The State respectfully requests that this Court overturn the trial court’s ruling and deny Silvia’s motion to vacate his death sentence.

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

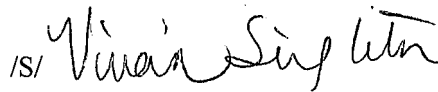
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 13, 2017, a true and correct copy of the above has been furnished by e-mail/e-portal to: Ali Shakoor, Assistant CCRC-Middle, shakoor@ccmr.state.fl.us, and support@ccmr.state.fl.us, 12973 N Telecom Parkway, Temple Terrace, FL 33637, the attorney for the Appellee.

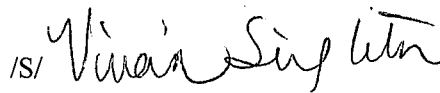


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**CERTIFICATE OF COMPLIANCE**

I certify that this brief was computer generated using Times New Roman 14 point font.

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