

**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**

**REPLY BRIEF OF APPELLANT**

**PAMELA JO BONDI  
ATTORNEY GENERAL**

**VIVIAN SINGLETON  
ASSISTANT ATTORNEY GENERAL**

**Fla. Bar No. 728071**

**Office of the Attorney General**

**444 Seabreeze Blvd., 5th Floor**

**Daytona Beach, Florida 32118**

**Primary E-Mail:**

**capapp@myfloridalegal.com**

**Secondary E-Mail:**

**vivian.singleton@myfloridalegal.com**

**(386)238-4990**

**(386)226-0457 (FAX)**

**COUNSEL FOR APPELLANT**

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## **RESPONSE TO REQUEST FOR ORAL ARGUMENT**

The State suggests that oral argument is not necessary in this case. This Court's precedent as well as the holding of the United States Supreme Court on similar claims illustrate that the Appellee is not entitled to pursue postconviction proceedings that he has previously waived. Although the Appellee seeks oral argument, the State asserts that oral argument is not needed here, nor does this Court require it in all capital postconviction proceedings.

## **RESPONSE TO CIRCUIT COURT RULING**

In the *Answer Brief*, the Appellee's argument on page 3 that "[t]he circuit court granted Mr. Silvia *Hurst* relief, and that matter is not being challenged by the State on appeal" is false. The State clearly argued on page 8 of the *Initial Brief* that "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." The State clearly argued that the Appellee is not entitled to *Hurst* relief because he waived postconviction proceedings.

## **ARGUMENT**

On page 6 of his brief, Silvia argues that one of the cases the State relies upon, *McMann v. Richardson*, 397 U.S. 759, 773-4 (1970), is distinguishable from the Appellee's case. Silvia argues that his case involves the Eighth Amendment as

interpreted by *Hurst v. State*, 202 So. 3d 40, 59 (Fla. 2016), which *McMann* does not. This argument is without merit. Silvia is seeking relief pursuant to *Hurst v. State* and *Hurst v. Florida*, 136 S. Ct. 616 (2016). However, the United States Supreme Court analyzed *Hurst v. Florida* pursuant to Sixth Amendment grounds. *Id.* at 624. The Court did not address the issue of any possible Eighth Amendment violation in *Hurst v. Florida*. Furthermore, this Court's Eighth Amendment analysis in *Hurst v. State* involves jury unanimity, not the issue before this Court now which is whether Silvia can pursue postconviction proceedings that he previously waived.

Contrary to Silvia's argument on page 6, finality is significant here. Given that the litigation in capital cases can span decades, there would never be any finality in capital cases if defendants were allowed to waive postconviction proceedings only to change their minds years later. Silvia is not the first person to pursue postconviction claims after waiving them nor will he be the last defendant to seek to benefit from a right he voluntarily gave up. For example, defendant Jeremiah Rodgers sought *Hurst* relief, despite waiving his postconviction rights and waiving jury sentencing. A trial court denied him relief, based in part upon his waivers. Rodgers' case is currently on appeal before this Court.

Silvia's reliance upon *Roper v. Simmons*, 543 U.S. 551 (2005) and *Atkins v. Virginia*, 536 U.S. 304 (2002) are misplaced because both of those cases involve

defendants who the United States Supreme Court has stated are ineligible to be sentenced to death. In *Roper*, the Court held that the execution of defendants who were under 18 years old when their crimes were committed is prohibited by the Eighth and Fourteenth Amendments. *Roper*, 543 U.S. at 578-9. In *Atkins*, the intellectually disabled were prohibited from being executed. *Atkins*, 536 U.S. at 321. The Supreme Court deemed that these two groups were a protected class of people that should not be executed. However, Silvia was not a juvenile when he committed his crime nor is he intellectually disabled. Silvia's eligibility for the death penalty is not in doubt nor is it at issue here. Therefore, references to *Roper* and *Atkins* are meritless.

It is important to note that Appellee has not cited any case – state or federal - that holds that a defendant who is eligible for the death penalty can exercise his right to pursue a postconviction proceeding that he previously waived. However, *Mullens v. State*, 197 So. 3d 16, 39 (Fla. 2016) and *Brant v. State*, 197 So. 3d 1051 (Fla. 2016) support the argument that subsequent legal developments do not make prior waivers involuntary.

Silvia was made fully aware of the actions that he was taking when he waived his postconviction rights.

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 v. State*, 2013 WL 5035694 at \*1-2 (Fla. Sept. 11, 2013)

(emphasis in original).

Contrary to Appellee's arguments, both *James v. State*, 974 So. 2d 365 (Fla. 2008) and *Trease v. State*, 41 So. 3d 119 (Fla. 2010) provide support for the State's position. Similar to *Silvia*, James was informed by the trial court that his actions would result in the waiver of any legal barriers to the State's ability to enforce the sentence of death.

THE COURT: And that means that this case is basically going to be over.

MR. JAMES: I'm sort of hoping that that's going to be the outcome of this hearing here.... It will be all said and done with and the State can go ahead and proceed in carrying out its sentence.

*James*, 974 So. 2d at 367-8.

This Court found that James fully understood the consequences and finality attached to a waiver. *Id.* at 368.

In *Trease*, the defendant knew that he was waiving any legal barriers.

THE COURT: Do you understand your right to further appeal will be forever lost?

MR. TREASE: I also understand that.

*Trease*, 41 So. 3d at 122.

In both cases, this Court refused to set aside prior waivers of postconviction proceedings. Appellee's argument that no motion was filed for Silvia whereas postconviction motions had been filed in *James* and *Trease* is not relevant. The issue for all three cases is whether or not a defendant, who has been told that he was forever waiving his right to postconviction proceedings, can exercise those rights following a waiver.

Appellee's reliance upon *Pangburn v. State*, 661 So. 2d 1182 (Fla. 1995) is also misplaced. *Pangburn* involved a defendant consenting to a stipulation in regards to which victim of a double murder the jury's vote for death applied. *Id.* at 1185. Before the defendant was sentenced, Pangburn attempted to withdraw his consent which the trial court refused to allow. *Id.* *Pangburn* is distinguishable

because the matter at issue was a waiver involving penalty phase juries. In contrast, the issue in the instant case is Silvia's waiver of postconviction proceedings. Thus, *Pangburn* does not apply.

While neither *Hurst v. Florida* nor *Hurst v. State* addressed the issue of whether a defendant can seek *Hurst* relief after waiving his postconviction rights, both state and federal precedent indicate that they cannot. While Silvia believes that the trial court was correct in determining that he "could not knowingly and voluntarily waive a right he did not possess at the time of the waiver," that analysis is incorrect and contradicts the reasoned analysis by state and federal courts when defendants have waived other rights that they "did not possess at the time of the waiver," such as in *McMann v. Richardson*, 397 U.S. 759, 773-4 (1970) (defendants sought to withdraw guilty pleas following a new court ruling) and *United States v. Vela*, 740 F.3d 1150 (7th Cir. 2014) (defendant asked that sentence be vacated following subsequent Supreme Court ruling despite having waived his right to appeal).

In *Mullens v. State*, 197 So. 3d 16 (Fla. 2016), this Court addressed the issue of changes in the law. "A subsequent change in the law regarding the right to jury sentencing did not render that initial waiver involuntary." *Id.* at 39 (citing *State v. Murdaugh*, 97 P. 3d 844, 853 (Ariz. 2004) and *Brady v. United States*, 397 U.S. 742 (1970)).

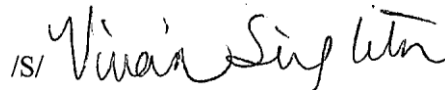
Silvia was aware that the law could change in the future and he waived his right to pursue the proceeding to which he now seeks to benefit. Considering the language used during the court proceeding, Silvia was fully aware of the scope of his waiver. Although Silvia and the trial court assert that he could not give up a right that he did not possess, it is impossible for the court or anyone to have a crystal ball and be able to predict future changes in the law. The future is unpredictable and the transcript illustrates that Silvia was warned that “he was losing permanently his right to take advantage of any changes that may occur in the law.” Thus, Silvia was put on notice that the law could change and, despite the changes that could occur, he was giving up his right to file the very motion he has filed. This Court must not allow Silvia to set aside his prior waiver.

### **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

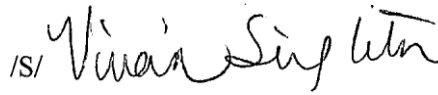
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VIVIAN SINGLETON  
ASSISTANT ATTORNEY GENERAL  
Florida Bar No. 728071  
Office of the Attorney General  
444 Seabreeze Blvd., 5th Floor

Daytona Beach, Florida 32118  
Primary E-Mail:  
CapApp@MyFloridaLegal.com  
Secondary E-Mail:  
vivian.singleton@myfloridalegal.com  
(386) 238-4990  
(386) 226-0457 (FAX)

**CERTIFICATE OF SERVICE**

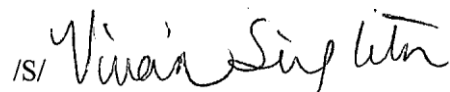
I HEREBY CERTIFY that on July 20, 2017, a true and correct copy of the above has been furnished by e-mail/e-portal to: Ali Shakoor, Assistant CCRC-Middle, shakoor@ccmr.state.fl.us, and support@ccmr.state.fl.us, 12973 N Telecom Parkway, Temple Terrace, FL 33637, the attorney for the Appellee.

  
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VIVIAN SINGLETON

**CERTIFICATE OF COMPLIANCE**

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

Respectfully submitted,  
PAMELA JO BONDI  
ATTORNEY GENERAL

  
\_\_\_\_\_  
VIVIAN SINGLETON  
ASSISTANT ATTORNEY GENERAL  
Florida Bar No. 728071  
Office of the Attorney General  
444 Seabreeze Blvd., 5th Floor  
Daytona Beach, Florida 32118

Primary E-Mail:

CapApp@MyFloridaLegal.com

Secondary E-Mail:

vivian.singleton@myfloridalegal.com

(386) 238-4990

(386) 226-0457 (FAX)