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IN THE SUPREME COURT OF FLORIDA

QUAWN M. FRANKLIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. SC17-824
L.T. No. 2002-CF-217-A-02
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellant, Quawn M. Franklin, was convicted of attempted armed robbery and first-degree murder in the shooting death of security guard Jerry Lawley in Lake County in December, 2001. Lawley's murder was the third violent crime committed by Franklin in the span of two weeks.[1] Franklin v. State, 965 So. 2d 79, 84 (Fla. 2007).

At the conclusion of the penalty phase, the jury returned a special interrogatory verdict form indicating that the jury unanimously found each of the four proposed aggravating factors: (1) the murder was committed while Franklin was serving a prison sentence because he was on conditional release at the time of Lawley's shooting; (2) Franklin had previous violent felony convictions, including another capital felony for the murder of Horan; (3) Lawley's murder was committed for pecuniary gain; and (4) the murder was cold, calculated, and premeditated (CCP). The jury also unanimously returned a recommendation for a death sentence. The trial court followed the jury's recommendation and

[1] Three months after being released from prison and while still on conditional release, Franklin kidnapped, robbed, and murdered a pizza delivery driver. Shortly thereafter, Franklin and his codefendant committed a forced invasion of the home of Alice Johnson. Franklin struck Johnson in the head with a hammer and stole her Toyota Camry. He subsequently pled guilty to burglary, robbery with a deadly weapon, and attempted felony murder and was sentenced to life imprisonment in the Alice Johnson case. Two days later, Franklin committed the instant murder of Jerry Lawley. Franklin, 965 So. 2d at 84.

imposed a death sentence. In its sentencing order, the trial court found the same four aggravating factors, rejected Franklin's age as a statutory mitigating factor, and found numerous nonstatutory mitigating factors. Franklin, 965 So. 2d at 87-88.

On direct appeal to this Court, Franklin raised a number of issues, including a claim challenging the constitutionality of Florida's death penalty scheme based on Ring v. Arizona, 536 U.S. 584 (2002). This Court rejected Franklin's claims and issued its opinion affirming his judgment and sentence on June 21, 2007. In denying Franklin's Ring claim, this Court stated:

> Franklin contends that Florida's capital sentencing statute is facially unconstitutional under Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002). He filed pretrial motions raising this claim as well as arguing that Ring requires a statement of particulars as to the aggravating factors and a unanimous jury recommendation as to penalty. At trial, defense counsel also challenged the sufficiency of the indictment charging Franklin with first-degree murder based on the failure to include the aggravating factors in the indictment. Franklin now also claims that judges throughout the state are violating the separation of powers doctrine by "improvising" remedies to the capital sentencing statute's "constitutional infirmities" under Ring.
>
> In over fifty cases since Ring's release, this Court has rejected similar Ring claims. See Marshall v. Crosby, 911 So. 2d 1129, 1134 n.5 (Fla. 2005), cert. denied, 547 U.S. 1143, 126 S. Ct. 2059, 164 L. Ed. 2d 807 (2006). As the Court's plurality opinion in Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002), noted, "the United States Supreme Court repeatedly has reviewed and upheld Florida's capital sentencing statute over the past quarter of a century." Id. at

695 & n.4 (listing as examples Hildwin v. Florida, 490 U.S. 638, 109 S.C t. 2055, 104 L. Ed. 2d 728 (1989), Spaziano v. Florida, 468 U.S. 447, 104 S. Ct. 3154, 82 L. Ed. 2d 340 (1984), Barclay v. Florida, 463 U.S. 939, 103 S. Ct. 3418, 77 L. Ed. 2d 1134 (1983), and Proffitt v. Florida, 428 U.S. 242, 96 S. Ct. 2960, 49 L. Ed. 2d 913 (1976)). See also King v. Moore, 831 So. 2d 143 (Fla. 2002) (denying relief under Ring).

Additionally, Ring did not alter the express exemption in Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), that prior convictions are exempt from the Sixth Amendment requirements announced in the two cases. This Court has repeatedly relied on the presence of the prior violent felony aggravating circumstance in denying Ring claims. See, e.g., Smith v. State, 866 So. 2d 51, 68 (Fla. 2004) (denying relief on Ring claim and "specifically not[ing] that one of the aggravating factors present in this matter is a prior violent felony conviction"); Davis v. State, 875 So. 2d 359, 374 (Fla. 2003) (stating that "[w]e have denied relief in direct appeals where there has been a prior violent felony aggravator"); Johnston v. State, 863 So. 2d 271, 286 (Fla. 2003) (stating that the existence of a "prior violent felony conviction alone satisfies constitutional mandates because the conviction was heard by a jury and determined beyond a reasonable doubt"), cert. denied, 541 U.S. 946, 124 S. Ct. 1676, 158 L. Ed. 2d 372 (2004); Henry v. State, 862 So. 2d 679, 687 (Fla. 2003) (stating in postconviction case that this Court has previously rejected Ring claims "in cases involving the aggravating factor of a previous violent felony conviction").

In the instant case, the trial court found the aggravating circumstance of a prior violent felony conviction, based on Franklin's convictions for the 1993 robbery of Martin, the December 2001 murder, kidnapping, and armed robbery of Horan, and the December 2001 burglary, robbery with a deadly weapon, and attempted felony murder of Johnson. Additionally, we have rejected similar claims that Ring requires aggravating circumstances to be alleged in the indictment or to be individually found by a unanimous jury verdict. See Hodges v. State, 885 So. 2d 338, 359 nn.9–10 (Fla. 2004); Blackwelder v. State, 851 So. 2d

650, 654 (Fla. 2003); Porter v. Crosby, 840 So. 2d 981, 986 (Fla. 2003).

Finally, we note that the trial court, at Franklin's request, gave the jury a special interrogatory verdict form regarding the aggravating factors. The jury unanimously found the four aggravating factors that the trial judge subsequently found applicable in Franklin's case. We recently held that "a trial court departs from the essential requirements of law in a death penalty case by using a penalty phase special verdict form that details the jurors' determination concerning aggravating factors found by the jury." State v. Steele, 921 So. 2d 538, 548 (Fla. 2005). We reached this conclusion because such a penalty phase special verdict form imposes a substantive burden on the State that is not found in the Florida statute and not constitutionally required. Id. at 546. However, even without this additional burden, requiring "specific jury findings on aggravators without guidance about their effect on the imposition of a sentence could unduly influence the trial court's own determination of how to sentence the defendant," thereby harming the trial court's independent determination of the existence of the aggravating and mitigating circumstances and the weight to be given each. Id. We further explained that the requirement of a majority vote on each aggravator is "an unnecessary expansion of Ring" and "creates a potential inconsistency in capital sentencing proceedings" in different courts. Id. at 546-47.

However, in light of Franklin's request for the special verdict form and the State's agreement to its use, the unanimous jury finding as to the four aggravating circumstances, and the jury's unanimous recommendation of a death sentence, we find no reversible error on this point. Thus, Franklin is not entitled to relief on any of his Ring claims.

Franklin, 965 So. 2d at 101-02 (emphasis added).

Following this Court's opinion affirming Franklin's judgment and sentence, Franklin unsuccessfully sought postconviction relief in state court. See Franklin v. State, 137

So. 3d 969 (Fla. 2014). Franklin also filed a petition for writ of habeas corpus in federal district court, and his petition is currently pending.

On January 9, 2017, Franklin filed a successive postconviction motion in circuit court pursuant to Florida Rule of Criminal Procedure 3.851. After reviewing the State's response and conducting a case management conference, the trial court issued an order on April 3, 2017, denying Franklin's motion based on a finding that any Hurst error was harmless beyond a reasonable doubt. Franklin filed a notice of appeal with this Court, and on June 20, 2017, this Court issued an order directing the parties to "file briefs addressing why the lower court's order should not be affirmed based on this Court's precedent in Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, No. 16-998 (U.S. May 22, 2017), Davis v. State, 207 So. 3d 142 (Fla. 2016), and Mosley v. State, 209 So. 3d 1248 (Fla. 2016)."

SUMMARY OF THE ARGUMENT

The lower court properly summarily denied Franklin's successive motion for postconviction relief. The record conclusively establishes that any Hurst error was harmless beyond a reasonable doubt as the jury in this case returned a special interrogatory verdict form indicating unanimous findings on each of the four aggravating circumstances and further unanimously recommended the death penalty. As this Court has made clear, the jury's unanimous recommendation is "precisely what [this Court] determined in Hurst to be constitutionally necessary to impose a sentence of death." Davis v. State, 207 So. 3d 142, 175 (Fla. 2016).

STANDARD OF REVIEW

The trial court's summary denial of Franklin's successive motion for postconviction relief is reviewed by this Court *de novo*, accepting the defendant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively establishes that the defendant is entitled to no relief. Walton v. State, 3 So. 3d 1000, 1005 (Fla. 2009).

ARGUMENT

ISSUE I

THE LOWER COURT PROPERLY DENIED FRANKLIN'S CLAIM THAT HIS DEATH SENTENCE WAS UNCONSTITUTIONAL UNDER THE SIXTH AMENDMENT AND HURST V. FLORIDA, 136 S. CT. 616 (2016).

In Hurst v. Florida, 136 S. Ct. 616 (2016), the United States Supreme Court declared the portion of Florida's capital sentencing scheme requiring the judge, rather than a jury, to find each fact necessary to impose a sentence of death unconstitutional in light of Ring v. Arizona, 536 U.S. 584 (2002).[2] On remand, this Court interpreted this holding as requiring that jury to make numerous factual findings prior to the court imposing a death sentence: the jury "must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death." Hurst v. State, 202 So. 3d 40, 57 (Fla. 2016). However, any Hurst error is subject to harmless error review, and this Court has stated that "the error is harmless only if there is no reasonable

[2] Franklin's judgment and sentence became final after Ring, and the parties did not dispute below that this Court has applied Hurst retroactively to post-Ring cases. See Mosley v. State, 209 So. 3d 1248 (Fla. 2016).

possibility that the error contributed to the sentence." Id. at 68.

In the instant case, the jury convicted Franklin of attempted armed robbery and first degree murder in the shooting death of security guard Jerry Lawley. At the penalty phase, the jury returned an interrogatory verdict form indicating unanimous findings on each of the four aggravating circumstances, and the jury also unanimously recommended a death sentence. Franklin now argues that, in denying his successive postconviction motion, the trial court erred in finding the Hurst error harmless because the jury's interrogatory verdict form failed to satisfy all of the requirements of Hurst v. State. Appellant's argument is without merit.

In Davis v. State, 207 So. 3d 142, 174 (Fla. 2016), this Court found that when the jury unanimously recommends a death sentence, their unanimous recommendation "allow[s] us to conclude beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." In the instant case, not only did the jury unanimously recommend the death penalty, the jury also unanimously found four aggravating circumstances; one of which was based on Franklin's prior violent felony convictions for, among other offenses, first degree murder.

Given the special interrogatory verdict form utilized in this case, there is no question that the Hurst error was harmless beyond a reasonable doubt. This Court has consistently followed Davis and found harmless error in cases involving unanimous recommendations. See King v. State, 211 So. 3d 866 (Fla. 2017); Kaczmar v. State, ___ So. 3d ____, 2017 WL 410214 (Fla. Jan. 31, 2017); Knight v. State, ___ So. 3d ____, 2017 WL 411329 (Fla. Jan. 31, 2017); Truehill v. State, 211 So. 3d 930 (Fla. 2017); Hall v. State, 212 So. 3d 1001 (Fla. 2017); Jones v. State, 212 So. 3d 321 (Fla. 2017); Middleton v. State, ___ So. 3d ____, 2017 WL 930925 (Fla. Mar. 9, 2017); Oliver v. State, 214 So. 3d 606 (Fla. 2017); Tundidor v. State, ___ So. 3d ____, 2017 WL 1506854 (Fla. Apr. 27, 2017); Morris v. State, ___ So. 3d ____, 2017 WL 1506853 (Fla. Apr. 27, 2017); Guardado v. Jones, ___ So. 3d ____, 2017 WL 1954984 (Fla. May 11, 2017); Cozzie v. State, ___ So. 3d ____, 2017 WL 1954976 (Fla. May 11, 2017). As Appellant has failed to demonstrate any basis for this Court to recede from this precedent, the State urges this Court to affirm the trial court's denial of his Hurst claim.

Likewise, this Court should reject Appellant's argument that the Hurst error cannot be harmless because the jury's role was allegedly improperly described in violation of Caldwell v. Mississippi, 472 U.S. 320 (1985). In Hall v. State, 212 So. 3d

1001 (Fla. 2017), this Court recently affirmed a defendant's death sentence based on a unanimous recommendation and rejected his challenge to Florida's jury instructions based on Caldwell. Id. at 1032-36 (noting that this Court has repeatedly rejected challenges to Florida's standard jury instructions based on Caldwell). It is well established that the harmless error test applies to constitutional error, and this Court has consistently found that a jury's unanimous death recommendation satisfies the harmless error standard as it establishes, beyond a reasonable doubt, that the jury unanimously made the requisite factual findings. See Jones, 212 So. 3d at 343 (noting that the jury's factual findings that the aggravating circumstances were sufficient to impose death and outweighed the mitigation was inherent in the jury's unanimous recommendation); King, 211 So. 3d at 889-93; Truehill, 211 So. 3d at 955-57.

Finally, Appellant's claim that consideration must be given to the fact that trial counsel would have tried the case differently under Hurst is unavailing. Appellant's assertion that trial counsel performed deficiently in voir dire and in failing to file a motion for change of venue are classic ineffective assistance of counsel claims that have already been rejected by this Court, see Franklin v. State, 137 So. 3d 969 (Fla. 2014), and counsel clearly cannot be faulted for failing

to anticipate the change in law following the issuance of Hurst. See Lebron v. State, 135 So. 3d 1040, 1054 (Fla. 2014). Accordingly, because the State satisfied its burden of establishing that the Hurst error was harmless beyond a reasonable doubt in Franklin's case, this Court should affirm the postconviction court's denial of his successive postconviction motion.

ISSUE II

FRANKLIN'S CLAIM THAT HIS DEATH SENTENCE VIOLATES THE EIGHTH AMENDMENT IS WITHOUT MERIT.

Despite the fact that Franklin's jury unanimously found the four aggravating circumstances and unanimously recommended the death penalty, Franklin nevertheless argues that his death sentence violates the Eighth Amendment because the jury's sense of responsibility was not properly explained or was diminished by the trial judge's instructions in violation of Caldwell v. Mississippi, 472 U.S. 320 (1985). Appellant's argument is without merit.

In order to establish constitutional error under Caldwell, a defendant must show that the comments or instructions to the jury "improperly described the role assigned to the jury by local law." Romano v. Oklahoma, 512 U.S. 1, 9 (1994). In the instant case, the jury was properly instructed on its role based upon the law existing at the time of Franklin's trial. It would have been impossible for the jury to have been instructed in accordance with any constitutional changes in the law that occurred after the trial.

The trial court specifically instructed the jury that their advisory recommendation did not have to be unanimous, but the jury unanimously found all four of the weighty aggravating circumstances and unanimously determined that death was the

appropriate sentence. (DAR V4:697-700). As this Court has noted, it is "inherent" in this recommendation that the jury determined that the aggravating circumstances were sufficient to impose death and that the aggravators outweighed the mitigation. Jones v. State, 212 So. 3d 321, 343 (Fla. 2017). Thus, even if there was any Eighth Amendment error in this case, the error was harmless beyond a reasonable doubt. Accordingly, this Court should affirm the court's ruling denying Franklin any relief based on Hurst.

CONCLUSION

In conclusion, Appellee respectfully requests that this Honorable Court affirm the lower court's order denying Appellant postconviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 20th day of July, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Maria Christine Perinetti, Lisa M. Bort and Raheela Ahmed, Assistant CCRC-M, Office of the Capital Collateral Regional Counsel, Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637-0907, perinetti@ccmr.state.fl.us, bort@ccmr.state.fl.us, ahmed@ccmr.state.fl.us, and support@ccmr.state.fl.us

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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