

IN THE SUPREME COURT OF FLORIDA

ARTHUR JAMES MARTIN,

Appellant,

v.

CASE NO. SC18-214
DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.

_____ /

APPELLEE'S MOTION FOR REHEARING/CLARIFICATION OR FOR
REMAND FOR RECONSIDERATION IN LIGHT OF STATE V. POOLE

COMES NOW Appellee, the State of Florida, by and through the undersigned Assistant Attorney General, and pursuant to Florida Rule of Appellate Procedure 9.330(a) and requests this Honorable Court to clarify certain points of law and fact in the Court's decision in Martin v. State, SC18-214, 2020 WL 238546 (Fla. Jan. 16, 2020). The State respectfully requests that this Court either reinstate Martin's death sentence or remand the matter to the circuit court for reconsideration of the Hurst v. State issue in light of State v. Poole, SC18-245, 2020 WL 370302 (Jan. 23, 2020). As ground for said motion, Appellee states as follows:

The relevant facts concerning the October 28, 2009, murder of Javon Daniels is recited in this Court's opinion in the direct appeal:

Two days before the murder, Martin's friend and codefendant Franklin Batie (Batie) was involved in a shooting where he was grazed on the back of the head and neck. On October 28, 2009, the day of the murder, Batie

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drove Martin to the Weber 5B Apartments in Jacksonville so that Martin could visit someone. Batie drove his car, a white Ford, to the apartment complex, and he remained in the car while Martin got out of the car and engaged in conversation. In the back seat of the Ford was Batie's loaded .45 caliber handgun. The gun was equipped with a thirty-round magazine.

While Batie remained in the car and waited for Martin, he noticed a white sport utility vehicle (SUV) and thought that he recognized the driver of the SUV as the person who shot him days earlier. Batie retrieved his gun from the backseat and mentioned to Martin that he possibly recognized the driver as having tried to shoot him. Martin then took Batie's gun and went to the driver's side of the SUV and began firing multiple shots at the driver, nineteen-year-old Daniels. When Daniels tried to escape through the passenger side of the SUV, Martin walked around the front of the SUV to the passenger side and continued firing. Eyewitness Sebastian Lucas testified that upon reaching the passenger side, Martin "shot him [Daniels] back down in the car." When Martin finished shooting, he walked back to the Ford, and Batie drove Martin home. Daniels died at the scene. Batie drove home to Starke, Florida, where he disposed of his Ford and began driving another vehicle. The murder weapon was never located.

Following the murder, detectives interviewed multiple eyewitnesses who viewed photo spreads of possible suspects and identified Martin as the shooter. Some of the witnesses did not know Martin by his given name but by his nicknames, "Beer Belly" or "Shorty Fat." Martin was arrested several days after the murder, and a grand jury later indicted him for first-degree murder. Three days after Martin's arrest, Batie was arrested in Starke. Batie later entered a guilty plea to second-degree murder. After the conclusion of Martin's trial, Batie was sentenced to ten years' imprisonment for his role in the murder.

Martin's case proceeded to a jury trial in 2012. The presentation of evidence during the guilt phase occurred solely during the State's case-in-chief. The State presented eyewitness testimony in addition to testimony from the medical examiner and law enforcement officers. Multiple eyewitnesses, including codefendant Batie, testified and identified Martin as the person who shot

Daniels. One of the eyewitnesses, Tasheana Hart, testified that in the days following the murder, Martin asked her "not to tell" what she saw on the day of the murder and offered her money in exchange for her silence.

The medical examiner, Dr. Valerie Rao, testified that Daniels sustained a total of twelve gunshot wounds. Daniels was shot in his left hand, left arm, right arm, left side, right side, right thigh, and chest. Four of the gunshot wounds produced fatal injuries to Daniels' lungs, heart, liver, and stomach. Daniels endured significant internal and external bleeding, and a total of 700 cubic centimeters of blood was collected from his chest cavity. The gunshot wounds to each of Daniels' arms broke the humerus in each arm, and the gunshot wound to his left hand broke two of the bones in his hand. These broken bones incapacitated Daniels and left him incapable of completing his attempted escape from the SUV.

At the conclusion of the State's case-in-chief, the defense rested without presenting evidence. After the jury deliberated and returned with a guilty verdict, the case proceeded to the penalty phase. During the penalty phase, in its initial case, the State presented two victim impact witnesses. The defense also stipulated to Martin's conviction for second-degree murder.

In its penalty phase case, the defense presented the testimony of three witnesses: Martin's mother, sister, and court-appointed mental health expert. Martin's mother and sister testified about Martin's personal life, including his childhood, family relationships, overall demeanor, work ethic, and health.

Martin's mental health expert was Dr. Stephen Bloomfield, a psychologist. Dr. Bloomfield testified that he reviewed background records, visited with Martin in jail, and administered psychological testing. Dr. Bloomfield also interviewed multiple witnesses, including Martin's mother and sister. Although Dr. Bloomfield testified that he reviewed thousands of pages of records, he was unable to conduct an exhaustive review of Martin's Miami-Dade Public Schools records because the majority of the records were destroyed by the school district as a matter of course when Martin reached twenty-five years of age.

In order to evaluate Martin's IQ, in 2011, Dr. Bloomfield administered the Wechsler Adult Intelligence Scale, fourth edition, or the WAIS-IV. He also tried to administer the Wide Range Achievement Test 4 (WRAT-4), but Martin was unable to complete the test. Dr. Bloomfield testified that Martin's WAIS-IV full-scale IQ score of 54 placed him in the mildly mentally retarded range. However, Dr. Bloomfield was unable to diagnose Martin as mentally retarded because he was unable to determine the onset of mental retardation prior to age 18 nor Martin's adaptive functioning prior to age 18.

Dr. Bloomfield testified that Martin's Florida Department of Corrections (DOC) records revealed multiple mental health evaluations and IQ screening tests. According to those records, although Martin never showed signs of significant mental or emotional deficits and never demonstrated that he was incapable of living in the general population, he was deemed "low functioning." DOC records documented that between 1992 and 2008, Martin took four IQ screening tests, with scores ranging from a low of 58 in 2002 to a high of 94 in 2008.

Dr. Bloomfield concluded that Martin has low cognitive functioning, is functionally illiterate, and suffers from a learning disability because of his inability to read. Dr. Bloomfield observed that Martin's grades in school were mixed and that Martin had numerous absences and caused frequent disruptions. However, Dr. Bloomfield conceded that Martin's grades were not necessarily due to a lack of intellectual capability but due to his disruptive behavior and absences from school.

In rebuttal, the State offered the testimony of Miami-Dade Police Department Detective Chris Stroze. Detective Stroze was involved in a 1998 murder investigation that led to Martin's conviction for second-degree murder. Detective Stroze testified that Martin did not have any problems reading or understanding the waiver form that advised him of his constitutional rights.

At the conclusion of the penalty phase, by a nine-to-three vote, the jury recommended that Martin be sentenced to death. A Spencer hearing followed, where both parties offered additional argument but did not present additional evidence. At the sentencing hearing, the trial court sentenced Martin to death, having found

that sufficient aggravating circumstances existed to warrant the death penalty and that the aggravating circumstances outweighed any mitigating circumstances.

Martin v. State, 151 So. 3d 1184, 1187-90 (Fla. 2014) (footnotes omitted). In imposing the death sentence, the trial judge found the following aggravating factors: (1) prior violent felony; (2) the murder was especially heinous, atrocious, or cruel (HAC); and (3) the murder was cold, calculated, and premeditated (CCP). Id. at 1190. The court found one statutory mitigating circumstance, Martin's age at the time of the murder, "to which it assigned slight weight based on minimal evidence of Martin's significant emotional immaturity." Id. "Additionally, the trial court evaluated fourteen nonstatutory mitigating circumstances proposed by the defense, and it found two other mitigating circumstances that were not proposed by the defense but were supported by the record." Id. (footnotes omitted). The trial court concluded in part: "'Despite the existence of mitigating factors and the weight assigned to each by this Court, the nature and quality of those factors pales in comparison to the enormity of the aggravating circumstances in this case.'" Id. Martin's conviction and sentence were affirmed on direct appeal. Id.

On direct appeal, this Court addressed six issues: (1) whether the trial court made improper findings of fact and gave insufficient consideration in mitigation to Martin's intellectual functioning; (2) whether the trial court failed to consider, find,

and weigh as a mitigating circumstance that Martin had a history of drug and alcohol abuse; (3) whether the trial court erred in finding that the homicide was committed in a cold, calculated, and premeditated manner (CCP) and was especially heinous, atrocious, or cruel (HAC); (4) a Ring claim; (5) sufficiency of the evidence; and (6) proportionality. Martin did not file a petition for writ of certiorari in the United States Supreme Court.

On February 18, 2016, Martin filed a "Motion to Vacate Judgments of Conviction and Sentence." After it was struck for exceeding the 75-page limit as prescribed by law, Martin filed a "Second Amended Motion to Vacate Judgments of Conviction and Sentence" on March 31, 2016. The State filed its answer to Martin's Motion on May 31, 2016. On September 30, 2016, Martin filed a "Third Amended Motion to Vacate Judgments of Conviction and Sentence with Special Request for Leave to Amend." The State filed an objection to the Third Amended Motion and a hearing was held on October 13, 2016. On October 24, 2016, the postconviction court struck the amendments made to Claims 1, 3, and 5, but did not strike Claim 10. On November 14, 2016, the State filed its Response to Martin's Third Amended Motion. An evidentiary hearing was held on August 24 and 25, 2017, and November 9, 2017, where Martin presented testimony and exhibits to support his Motion. Likewise, the State presented documents in opposition to the Motion. After the parties submitted written closing arguments, on January 8,

2018, the postconviction court filed its order, denying Defendant's guilt-phase claims and dismissing the penalty-phase claims as moot under Hurst v. State.¹

By the time of the March 15, 2017, case management conference, this Court routinely reversed cases where the death sentence was based on a less than unanimous recommendation regardless of the existence of a prior or contemporaneous violent felony conviction. See, e.g., Ault v. State, 213 So. 3d 670 (Fla. 2017) (prior violent felonies, during the course of a sexual battery, child abuse, and kidnapping); Anderson v. State, 220 So. 3d 1133 (Fla. 2017) (prior violent felonies, during the course of a kidnapping); Durousseau v. State, 218 So. 3d 405 (Fla. 2017) (prior violent felony conviction).

At the case management conference, the State acknowledged, as it was ethically required to, that under the Florida Supreme Court controlling precedent Martin was entitled to a new penalty phase. See Florida Bar Rules Regulating Fla. Bar 4-3.3(a)(3); Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, ___ So. 3d ___, 43 Fla. L. Weekly D2271, 2018 WL 4609002 (Fla. 3d DCA Sept. 26, 2018) (finding there was a reasonable basis to conclude that an appellate attorney violated his duty of candor to the tribunal by failing to disclose

¹ The State maintains that Hurst v. Florida is not retroactive and that this Court should recede from Mosley v. State, 209 So. 3d 1248 (Fla. 2016), and abrogate James v. State, 615 So. 2d 668 (Fla. 1993). See Answer Brief of Appellee Owens v. State (SC18-810).

to the court controlling adverse law in his brief, as required by Rule 4-3.3(a)(3)); see also State v. Lott, 286 So. 2d 565, 566 (Fla. 1973) (“The trial court is bound by the decisions of this Court just as the District Courts of Appeal follow controlling precedents set by the Florida Supreme Court.”). What the State did not do is recede from its position that Hurst v. State was incorrectly decided.

A week after the opinion in Martin’s case was issued, this Court decided State v. Poole, SC18-245, 2020 WL 370302 (Jan. 23, 2020). In Poole, this Court partially receded from its previous decision in Hurst v. State. This Court explained that the “Court in Hurst v. State got it wrong.” Poole, 2020 WL 370302 at *14. This Court receded from Hurst v. State “except to the extent it requires a jury unanimously to find the existence of a statutory aggravating circumstance beyond a reasonable doubt,” Id. at *15, which is the argument the State made in its written response to Martin’s Postconviction Motion.

Since this Court issued its opinion in this case, the Supreme Court has expressly recognized that Hurst v. Florida was limited to the finding of an aggravating circumstance that renders a defendant eligible for the death penalty. Notably, the Court also held that Hurst v. Florida, like Ring before it, is not retroactive. See McKinney v. Arizona, 140 S.Ct. 702 (2020).

Martin's previous second-degree murder conviction and two armed robbery with a firearm convictions satisfy the Sixth Amendment requirement that at least one aggravating circumstance be proven beyond a reasonable doubt. The State recognizes that it did not raise the applicability of Hurst v. State to Martin's case on appeal from the postconviction court's order granting a new penalty phase. That said, Martin is pending resentencing pursuant to the postconviction court's order. An order that was based on a decision that this Court now recognizes was legally flawed.

The State should not be denied the benefit of Poole in Martin's case. At the case management conference, the State and the postconviction court were faced with binding precedent from this Court. As mentioned earlier, though, the State never receded from its argument that Hurst v. State was wrongly decided. A position that has now been vindicated by this Court.

It would be an enormous waste of the courts' time, the citizens who are called for jury duty's time, and the taxpayers' money, to require a new penalty phase based on a decision that this Court in State v. Poole acknowledged was incorrectly decided on a myriad of levels including mischaracterizing weighing as a fact; requiring a unanimous jury recommendation of death; and ignoring the Florida constitution's conformity clause regarding the Eighth Amendment when it held that all the jury's additional findings and final recommendation had to be made unanimously. State

v. Poole, 2020 WL 370302 at *8, *11, *12 (noting the United States Supreme Court's decision in Hurst v. Florida "did not address Hurst's Eighth Amendment argument").

Furthermore, this Court held that Hurst v. State was not entitled to stare decisis protection because the perpetuation of an error in legal thinking "serves no one well and only undermines the integrity and credibility of the court." State v. Poole, 2020 WL 370302 at *14, citing Shepard v. State, 259 So. 3d 701, 707 (Fla. 2018). Instead of being a "narrow and predictable ruling that should have had limited practical effect on the administration of the death penalty in our state," Hurst v. State had the opposite result. Id. In light of the number and magnitude of the legal errors in Hurst v. State, this Court should not require the prosecutors and citizens of Florida, not to mention the victims' family, to go through the empty formality and enormous waste of resources of a new penalty phase based on that legally flawed and erroneous decision. Additionally, the new penalty phases required by the now-repudiated Hurst v. State decision consume massive prosecutorial resources that are better spent in prosecuting other cases and in keeping citizens safe from other criminals.

Additionally, new penalty phases in capital cases are quite time consuming in the trial court and will result in dozens of appeals in this Court as well. This unnecessary delay is repugnant to the state constitution. See art. I, § 16(b)(10) ("The right to

proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.”).

As such, the State respectfully requests that this Court clarify its opinion in Martin v. State and either reinstate Martin’s death sentence or remand the matter to the circuit court for reconsideration of the penalty-phase issues in light of State v. Poole. Either way, Martin is not entitled to a new sentencing hearing based on a decision that was wrong from its inception, that is based on flawed legal analysis, and that is not entitled to any deference from any court in the state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 5th day of March, 2020, 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: Dawn B. Macready, dawn.macready@ccrc-north.org, and Elizabeth Salerno, Elizabeth.salerno@ccrc-north.org, attorneys for Appellant.

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).

/s/ Lisa A. Hopkins
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