

IN THE SUPREME COURT OF FLORIDA

ERIC LEE SIMMONS,

Appellant,

vs.

CASE NO. SC14-2314

STATE OF FLORIDA,

Appellee.

_____ /

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

APPELLANT'S SECOND SUPPLEMENTAL REPLY BRIEF

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

By: NANCY RYAN,
Florida Bar No. 765910
ASSISTANT PUBLIC DEFENDER
444 Seabreeze Blvd., Suite 210
Daytona Beach, Florida 32118
Phone: 386/254-3758
ryan.nancy@pd7.org

COUNSEL FOR APPELLANT

RECEIVED, 11/23/2016 09:28:30 AM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	1
IN REPLY: THE SIXTH AMENDMENT ERROR IDENTIFIED IN <u>HURST v. FLORIDA</u> CANNOT REASONABLY BE DEEMED HARMLESS ON THIS RECORD.	
CONCLUSION	2
CERTIFICATE OF SERVICE	3
CERTIFICATE OF FONT	3

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Hurst v. State

2016 WL 6036978 (Fla. 2016)

1

ARGUMENT

IN REPLY: THE SIXTH AMENDMENT ERROR IDENTIFIED IN HURST v. FLORIDA CANNOT REASONABLY BE DEEMED HARMLESS ON THIS RECORD.

The trial court gave insignificant weight to the nonstatutory mitigating circumstances proved below. The State assumes that “any rational jury,” correctly instructed, would have done the same, assigning little importance to the fact that in this case four of the jury’s members - a full third of its membership - voted against imposing the death penalty. In Hurst v. State, 2016 WL 6036978 (Fla. 2016), this court held that “the fact that only seven jurors recommended death strongly suggests” that Hurst’s jury would not, if correctly instructed, have found that the aggravation both warranted death and trumped the showing in mitigation. Hurst at *24. This court should apply that reasoning here, and hold that the State has failed to meet its burden of showing beyond a reasonable doubt that no reasonable jury would have found the substantial mitigation in this case insufficient to call for leniency.

CONCLUSION

Appellant has shown that this court must vacate the resentencing order appealed from, and either impose a life sentence on proportionality grounds or remand for further proceedings authorized by law.

Respectfully submitted,

JAMES S. PURDY,
PUBLIC DEFENDER

Nancy Ryan

By: NANCY RYAN
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 765910
444 Seabreeze Blvd., Suite 210
Daytona Beach, Florida 32118
386/254-3758
ryan.nancy@pd7.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Second Supplemental Reply Brief has been electronically delivered to Assistant Attorney General Stephen Ake, at capapp@myfloridalegal.com, this 23rd day of November, 2016.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with Rule 9.210(2)(a), Florida Rules of Appellate Procedure, in that it is set in Times New Roman 14-point font.

Nancy Ryan
Nancy Ryan