IN THE SUPREME COURT OF FLORIDA
CASE NO. SC16-224

ENOCH D. HALL
Petitioner,
v.
JULIE JONES
Secretary, Florida Department of Corrections,
Respondent.
and
PAMELA BONDI
Attorney General,
Additional Respondent,

REPLY TO STATE'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT ABOUT THE RECORD

References to the record on direct appeal are designated "R" followed by the page number. References to the postconviction record are designated "PCR" followed by the page number. All references to volumes are designated as "V" followed by the volume number. References to the State's Response to the Petition for Writ of Habeas Corpus Relief are designated as "SR" followed by the page number of the brief.

Every page of the record on direct appeal has been assigned a volume. However, the clerk did not assign volume numbers to the postconviction record.

ARGUMENT CLAIM I

Appellate counsel was ineffective for failing to challenge the constitutionality of Florida Statute 921.141. It is facially vague and overbroad in violation of the 8th and 14th Amendments, and the unconstitutionality was not cured because the jury did not receive adequate guidance in violation of the 8th and 14th Amendments. The trial court's instructions to the jury unconstitutionally diluted its sense of responsibility in determining the proper sentence. Mr. Hall's death sentence is premised on fundamental error which must be corrected.

The State's Response contends that this claim was already litigated on direct appeal. SR17 The Response lists the claims made on direct appeal. SR11-12 This claim is not listed.

The State's Response alleges that trial counsel failed to raise a Caldwell[1]

[1] Caldwell v. Mississippi, 472 U.S. 320 (1985).

objection, therefore this issue was not preserved. SR19 The Response states:

> Trial counsel seems to renew his objections specifically to the instructions pertaining to aggravators and "due process, equal protection and a fair trial," but arguably, does not renew his Caldwell objection at the conclusion of the charge conference. (DAR, V35,R3546). Admittedly however, there was a lengthy charge conference and quite a bit of confusion among the attorneys as to the new standard jury instructions that had been released that day, and trial counsel attempted to make several relevant objections, without much success. (See DAR, V35, R3462-3547)

However, a review of the record reflects that at the charge conference trial counsel stated:

> Mr. Quarles: We object to the word advisory.
> The Court: Where is that, sir?
> Mr. Quarles: The fourth line.
> The Court: Fourth line, advisory sentence?
> Mr. Quarles: Yes. We maintain that although it is – Florida Supreme Court has held that it's a co-sentencer situation of the trial court, we maintain that that violates Mr. Hall's right to a jury trial under the Sixth Amendment.
>
> Also, the line that they added, which is also in some form in the old instructions, in this case, as the trial judge, that responsibility will fall on me. We contend that denigrates the jury's role, and contrary to ***Caldwell versus Mississippi***, and also, is a Sixth Amendment violation.
> The Court: Okay. The word advisory actually still exists in the original instruction, further down, if you see that.
> Mr. Quarles: I recognize that, Your Honor. Still object to it.
>
> And that's one thing I'd like to make – any previous motions that we have filed that apply to these, it would be – it's a tedious task at this point and almost impossible to compare those to the new ones at this point, in this amount of time, but we don't want to waive any of those prior objections and motions that we filed that have denied that still have the problem in the new instructions, if you decide to give these. V35/R3502-3503

Trial counsel made it clear that he objected to the jury being told their role was

merely advisory whether or not the court decided to use the new instructions or the original instructions, as both sets of instructions had that fatal flaw. Counsel preserved this objection.

Appellate counsel was ineffective for failing to challenge the fact that Mr. Hall's jury was unconstitutionally instructed by the Court that its role was merely "advisory." V35/R3583-3584 The State contends the judge has been the ultimate sentencer. However, because great weight has been given to the jury's recommendation, the jury should have been the sentencer in Florida. Instead, the jury's sense of responsibility was diminished by the misleading comments and instructions regarding the jury's role. This diminution of the jury's sense of responsibility violated the Eighth Amendment. See, Caldwell.

Furthermore, the State's Response also disregards the United States Supreme Court's findings in Hurst[2] and asks this Court to continue using an unconstitutional system in analyzing whether or not it was appropriate to tell a jury their role was merely advisory. In light of the recent Hurst decision, the prejudice in the instant case is enhanced and multiplied.

2 Hurst v. Florida, 136 S.Ct. 616, 577 US __, 193 L. Ed. 2d 504 (2016).

ARGUMENT CLAIM II

Based on the principle of evolving standards of decency, Florida's capital sentencing statute is unconstitutional on its face and as applied for failing to prevent the arbitrary and capricious imposition of the death penalty and for violating the guarantee against cruel and unusual punishment in violation of the 5th, 6th, and 14th Amendments to the United States Constitution.

Respondent alleges that this claim is procedurally barred because it was raised on direct appeal. SR24 This is inaccurate. The claim raised in Mr. Hall's direct appeal was a Sixth Amendment claim that Florida's death sentencing scheme was unconstitutional pursuant to Ring v. Arizona, 536 U.S. 584 (2002). See, Hall v. State, 107 So.3d 262 (Fla. 2012). The claim raised in the instant Habeas Petition is that Florida's continued national and international status as an outlier in its arbitrary and capricious application of the death penalty under the statutory scheme in place when Mr. Hall was sentenced violates evolving standards of decency.

The word "evolving," by its very definition, means slow or gradual change. Prohibiting a capital defendant from raising such a claim, even though standards of decency may slowly or gradually change prior to his execution, results in an unconstitutional denial of access to the courts. As such, this claim is not procedurally barred and is properly before this Court.

With respect to the merits, Respondent fails to address Mr. Hall's arguments, merely stating that this Court has repeatedly denied Ring relief. SR24 As noted above, Mr. Hall is not raising a Ring claim, as he and the State acknowledge his Ring

claim was properly preserved and heard on direct appeal.

As to Hurst, the Respondent argues that Mr. Hurst was in a distinctly different positon from Mr. Hall. SR30 However, the ruling in Hurst makes no distinction among death penalty cases sentenced under Florida's sentencing scheme at that time. The United States Supreme Court held that it is unconstitutional for a judge rather than the jury to find the facts necessary to sentence a defendant to death. The Court found, "Any fact that 'expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict' is an 'element' that must be submitted to a jury. Apprendi v. New Hersey, 530 U.S. 466, 494. In the years since Apprendi, we have applied its rule … in Ring, 536 U.S. 584, capital punishment." Hurst at 621.

The State's response focuses on the claim, "In Florida, a defendant is *eligible* for a capital sentence if at least one aggravating factor applied to the case."[3] SR30 The Respondent's argument does not address the fact that in Mr. Hall's case a jury did not determine whether "there were insufficient *mitigating circumstances* to outweigh the aggravating circumstances," which is also an issue with Florida's sentencing statute mentioned by the Court in Hurst. Id. at 622. See, Florida Statutes 921.141(3).

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3 Petitioner contends this statement is an incorrect reading of Florida Statute 921.141 and Hurst.

Furthermore, the Court countered the State's argument that the jury's recommendation necessarily included an aggravating circumstance by holding, "The State fails to appreciate the central and singular role the judge plays under Florida law," which makes the court's finding necessary to impose death and make the jury's function merely advisory. Id. The Court held, "The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that Ring requires." Id. Therefore, the jury's recommendation of death does not rise to the level of a "jury finding" as suggested by Respondent. SR 31 Mr. Hall's death sentence is unconstitutional.

As in Furman v. Georgia,[4] Mr. Hall should be resentenced to life. Arguably, Furman also involved a situation where the United States Supreme Court found Georgia's *statutory sentencing scheme* unconstitutional, rather than the actual penalty of death or method of execution. Florida's scheme had the same deficiencies as Georgia's, and all the death sentences under our unconstitutional statute were commuted to life.[5] Id. The ruling in Hurst, finding the state's death sentencing scheme unconstitutional, though pursuant to a different U.S.

4 Furman v. Georgia, 408 U.S. 238 (1972).

5 As Justice Quince stated during the Hurst oral argument on May 5, 2016, "But in Furman the United States Supreme Court, there was a very divided Court. They didn't hold the death penalty to be unconstitutional. They held statues that didn't narrow the aggravators – you know, who gets it, unconstitutional. But yet this Court and the Attorney General then had no problem saying under this statute that everybody who had been sentenced to death would be given life. SC12-1947

Constitutional Amendment, should nevertheless create the same result as in Furman.

Wherefore, based on the principle of evolving standards of decency, Florida's capital sentencing scheme denies Mr. Hall his right to due process of law, and constitutes cruel and unusual punishment on its face and as applied. The Florida death penalty statute as it existed and as it was applied in this case is unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution and under Article 1 Section 17 of the Constitution of the State of Florida. Its application in Mr. Hall's case entitles him to relief.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Enoch D. Hall respectfully urges this Honorable Court to grant habeas relief in the form of a new trial and sentencing. Moreover, this Court should grant any other relief that allows this Court to achieve justice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply to State's Response to Writ of Habeas Corpus has been furnished to the clerk of court through the E-Portal and by email to Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com and CapApp@MyFloridaLegal.com and U.S. Mail to Enoch D. Hall, DOC#214353, Florida State Prison, 7819 N.W. 228TH Street, Raiford, Florida 32026 on this 24th day of June, 2016.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply to State's Response to Petition for Writ of Habeas Corpus was generated in Times New Roman 14-point font pursuant to Fla. R. App. P. 9.210.

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