

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**CASE NO. CR 76-532**

**v.**

**HENRY PERRY SIRECI,**

**Defendant.**

\_\_\_\_\_ /

**NOTICE OF APPEAL**

COMES NOW, Henry P. Sireci, by and through undersigned counsel, and takes and enters this Notice of Appeal to the Florida Supreme Court to review the final orders of the Circuit Court of the Ninth Judicial Circuit, in and for Orange County.

The nature of the orders appealed are:

- Order Denying “Successive Motion to Vacate Death Sentence,” signed on May 19, 2017.
- Order Denying Motion to Disqualify the Office of the State Attorney for the Fifth Judicial Circuit, signed on May 19, 2017.
- Order Denying Motion to Continue Case Management Conference, signed on May 19, 2017.

All parties to said cause are called upon to take notice of the entry of this Appeal.

Respectfully submitted,

**s/Maria E. DeLiberato**

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**/s/ Julissa R. Fontán**

Julissa R. Fontán

FLORIDA SUPREME COURT

06/19/2017

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Counsel for Mr. Sireci

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been electronically filed with the Clerk of the Clerk for the Ninth Judicial Circuit in and for Orange County and electronically served upon the Honorable Wayne C. Wooten, [ctjash1@ocnjcc.org](mailto:ctjash1@ocnjcc.org); Assistant Attorney General Scott Browne, [scott.browne@myfloridalegal.com](mailto:scott.browne@myfloridalegal.com) and [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com), Assistant State Attorney Gabriela Bonilla, [eservicelake@sao5.org](mailto:eservicelake@sao5.org) and State Attorney Brad King, [eservicemarion@sao5.org](mailto:eservicemarion@sao5.org) on this 16<sup>th</sup> day of June, 2017.

**s/Maria E. DeLiberato**  
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State of Florida, County of Orange  
I hereby certify that the foregoing is a true and correct copy of the instrument filed in this office.  
Confidential or sealed items, if any, have been removed per Fla.R.Jud.Admin.2.420.  
Witness my hand and official seal this 06/19/17 .  
Tiffany M. Russell , Clerk of the Circuit Court  
By: /s/ Laura Keating

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

v.

CASE NO. 1976-CF-532  
CAPITAL POST-CONVICTION CASE

HENRY PERRY SIRECI,

Defendant.

\_\_\_\_\_ /

**ORDER DENYING “SUCCESSIVE MOTION TO VACATE DEATH SENTENCE”**

THIS MATTER came before the court on Defendant Henry Perry Sireci’s “Successive Motion to Vacate Death Sentence” filed on January 9, 2017. Having reviewed the motion, the file, the State’s Response, as well as hearing argument of counsel at a hearing on April 21, 2017, the court finds as follows:

**Procedural History**

In 1976, Henry Perry Sireci was convicted of the first degree murder of Howard Poteet. The trial judge followed the jury’s recommendation and imposed a sentence of death. The Florida Supreme Court affirmed. *Sireci v. State*, 399 So. 2d 964 (Fla. 1981). On May 17, 1982, the U.S. Supreme Court denied certiorari. *Sireci v. Florida*, 456 U.S. 984 (1982), *rehearing denied*, 458 U.S. 1116 (1982).

Sireci subsequently unsuccessfully sought postconviction relief in the trial court pursuant to Florida Rule of Criminal Procedure 3.850. The denial of his motion was affirmed on appeal. *Sireci v. State*, 469 So. 2d 119 (Fla. 1985), cert. denied, 478 U.S. 1010 (1986).

On September 19, 1986, the Governor signed a death warrant for Sireci, prompting the filing of a second motion for postconviction relief. A limited evidentiary hearing on this postconviction motion was granted by the Ninth Judicial Circuit Court, and the State unsuccessfully appealed. *State v. Sireci*, 502 So. 2d 1221 (Fla. 1987).

The trial court held an evidentiary hearing on Sireci’s second 3.850 motion and ultimately ordered a new sentencing hearing on grounds that two court-appointed psychiatrists conducted incompetent evaluations at the time of the original trial. At the conclusion of the evidentiary hearing, a new penalty phase was granted. The State appealed and trial court’s decision was affirmed on appeal. *State v. Sireci*, 536 So. 2d 231 (Fla. 1988). At resentencing, the jury recommended the death penalty by a vote of eleven to one and the Judge again imposed the death penalty. Sireci filed an appeal, and the Florida Supreme Court affirmed his death sentence.

*Sireci v. State*, 587 So. 2d 450 (Fla. 1991). The U.S. Supreme Court subsequently denied certiorari. *Sireci v. Florida*, 503 U.S. 946 (1992).

On or about August 21, 1997, Sireci filed his Third Amended Motion for Postconviction Relief. On February 9, 1999, the court summarily denied the motion. Sireci appealed, and on September 7, 2000, the Florida Supreme Court affirmed. *Sireci v. State*, 773 So. 2d 34 (Fla. 2000).

Sireci then filed several motions for DNA testing. Ultimately, he filed a third amended motion for DNA testing, which the trial court denied on July 15, 2003. The court held that Sireci failed to meet the technical requirements of Florida Rule of Criminal Procedure 3.853 and failed to show a reasonable probability of acquittal or that he would receive a lesser sentence on retrial. On appeal, the Florida Supreme Court, the Court held that the trial court erred in finding that the technical requirements of the rule were not met, but affirmed the trial court's finding that such testing carried no "reasonable probability" of a different result. *Sireci v. State*, 908 So. 2d 321, 325 (Fla. 2005). Sireci filed a petition for writ of certiorari in the United States Supreme Court, which was denied December 12, 2005. *Sireci v. Florida*, 546 U.S. 1077 (2005).

Sireci filed a Petition for Writ of Habeas Corpus in the United States District Court, Middle District of Florida, on October 3, 2002. The motion was held in abeyance pending resolution of state court case. Sireci filed an amended petition and supporting memorandum on July 24, 2006. The State filed its response on November 29, 2007. The District Court denied the Petition on March 12, 2009. Sireci's motion to alter or amend the judgment was denied on July 28, 2009. On October 15, 2009, the District Court granted a certificate of appealability on Sireci's claim that the prosecutor asked a question from which the jurors could infer Sireci had been previously sentenced to death, the denial of a motion for mistrial on that basis, and, the denial of his attempt to interview the jurors. The 11th Circuit Court of Appeals affirmed the district court's decision. *Sireci v. Attorney General*, 406 Fed. Appx. 348, 351-352 (11th Cir. 2010) (unpublished). Sireci filed a petition for writ of certiorari in the United States Supreme Court, which was denied October 3, 2011.1 *Sireci v. Bondi*, 132 S. Ct. 223 (2011).

On April 21, 2014, Sireci filed an "Amended Successive 3.851 Motion to Vacate Judgment of Conviction and Sentence" which was denied by the court on November 24, 2014. Mr. Sireci appealed and on December 16, 2015, the Florida Supreme Court affirmed the denial of the motion. *Sireci v. State*, 192 SO. 3d 42 (Fla. 2015).

In his Successive Motion to Vacate Death Sentence, Mr. Sireci asserts that he is entitled to relief pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016), the enactment of Chapter 2016-13 on March, 7, 2016, and the decisions of *Hurst v. State*, 2016 WL7406506 (Fla. Dec. 22, 2016) and *Asay v. State*, 2016 WL7406538 (Fla. Dec 22, 2016). Specifically, he argues the following:

1. His death penalty violated the Sixth Amendment under *Hurst* because the judge, rather than the jury, found the requisite aggravating factors.
2. He is entitled to retroactive application of *Hurst* under the fundamental fairness doctrine.

3. He is entitled to retroactive application of *Hurst* under the traditional *Witt* test.
4. He has a federal right to retroactive application of the *Hurst* decisions.
5. The State cannot establish that the *Hurst* error in his sentencing was harmless beyond a reasonable doubt.
6. His death sentence violates the Eight Amendment under *Hurst*.
7. The court's denial of his prior postconviction claims must be reheard and determined under a Constitutional framework.

The State argues that *Hurst* is inapplicable to sentences which became final prior to the decision in *Ring v Arizona*, 536 U.S. 584 (2002) and therefore all claims are procedurally barred.

In *Hurst v. Florida*, the United States Supreme Court extended its holding in *Ring* to Florida's death penalty procedures for the first time and held that the Sixth Amendment right to a jury trial rendered those procedures unconstitutional. *Asay v. State*, 210 So. 3d 1 (Fla. 2016); *Gaskin v. State*, No. SC15-1884, 42 Fla. L. Weekly S16 (Fla. Jan. 19, 2017); *Bogle v. State*, 42 Fla. L. Weekly S166 (Fla. Feb. 9, 2017). This court finds the State's arguments are well-taken and concludes that it is bound by the Florida Supreme Court's rulings. Therefore, because Mr. Sireci's sentence became final prior to 2002, he is not entitled to the retroactive application of *Hurst v. Florida* and *Hurst v. State*.

As to his request for a rehearing of claims raised in his previous motions, Mr. Sireci has presented the court with no persuasive authority to support his claim. This is particularly so when the prior claims had no relation to the issue of unanimous jury findings. Mr. Sireci's prior claims were denied on the merits and affirmed by the Florida Supreme Court. As the State argues, *Hurst* does not resurrect Mr. Sireci's previously denied claims.

Based on the foregoing, it is ORDERED AND ADJUDGED:

1. The Successive Motion to Vacate Death Sentence is hereby **DENIED**.
2. Defendant may file a Notice of Appeal in writing within 30 days from the date of rendition of this Order.

3. The Clerk of Court shall promptly serve a copy of this Order upon Defendant, including an appropriate certificate of service.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 19

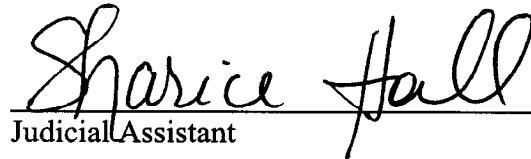
day of May, 2017.



Wayne C. Wooten  
Circuit Court Judge

**Certificate of Service**

I certify that a copy of the foregoing Order Denying Successive Rule 3.851 motion has been provided, via e-mail/Florida Courts E-Portal Filing System, this 19 day of May, 2017 to **Scott A. Browne, Esquire**, [scott.browne@myfloridalegal.com](mailto:scott.browne@myfloridalegal.com), **Kenneth Nunnelley, Esquire**, [knunnelley@sao9.org](mailto:knunnelley@sao9.org), **Maria E. DeLiberato, Esquire**, [deliberato@ccmr.state.fl.us](mailto:deliberato@ccmr.state.fl.us), **Julissa R. Fontan, Esquire**, [fontan@ccmr.state.fl.us](mailto:fontan@ccmr.state.fl.us), **Chelsea Shirley, Esquire**, [shirley@ccmr.state.fl.us](mailto:shirley@ccmr.state.fl.us)

  
Judicial Assistant

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 1976-CF-000532-A-O

STATE OF FLORIDA,

Plaintiff,

v.

HENRY PERRY SIRECI,

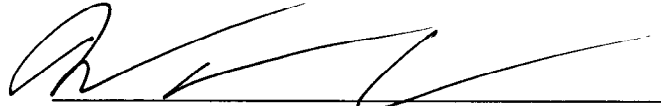
Defendant.

**ORDER DENYING MOTION TO DISQUALIFY THE OFFICE OF THE STATE  
ATTORNEY FOR THE FIFTH JUDICIAL CIRCUIT**

THIS CAUSE came before the Court upon Defendant's Motion to Disqualify the Office of the State Attorney for the Fifth Judicial Circuit. The State filed a Response to Motion to Disqualify and an Amended Response on April 21, 2017. Defendant offers no persuasive legal or factual grounds to support the disqualification of the Office of the State Attorney for the Fifth Judicial Circuit in this case. The Court, having reviewed the pleadings and the court file and being otherwise duly advised in the premises, hereby **ORDERS AND ADJUDGES AS FOLLOWS:**

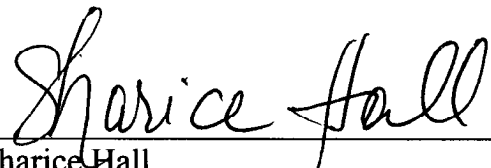
The Defendant's Motion to Disqualify the Office of the State Attorney for the Fifth Judicial Circuit is hereby **DENIED**.

**DONE AND ORDERED** in Chambers, Orlando, Orange County, Florida this 19 day of May, 2017.

  
Wayne C. Wooten  
Circuit Court Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 19 day of <sup>May</sup> ~~A~~, 2017, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

  
Sharice Hall  
Judicial Assistant

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IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 1976-CF-000532-A-O

STATE OF FLORIDA,

Plaintiff,

v.

HENRY PERRY SIRECI,

Defendant.

\_\_\_\_\_ /

**ORDER DENYING MOTION TO CONTINUE**  
**CASE MANAGEMENT CONFERENCE**

THIS CAUSE, having come on to be heard before the Court upon Defendant's Motion to Continue Case Management Conference and having reviewed the pleading and the court file and being otherwise duly advised in the premises, hereby

**ORDERS AND ADJUDGES AS FOLLOWS:**

The Defendant's Motion to Continue the Case Management Conference scheduled April 21, 2017 is hereby **DENIED**.

**DONE AND ORDERED** in Chambers, Orlando, Orange County, Florida this

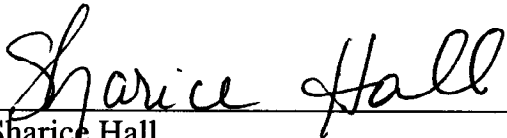
19 day of May, 2017.



Wayne C. Wooten  
Circuit Court Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 19 day of May, 2017, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

  
\_\_\_\_\_  
Sharice Hall  
Judicial Assistant

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