

Supreme Court of Florida

No. SC17-1150

GALANTE ROMAR PHILLIPS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[July 19, 2018]

PER CURIAM.

This case is before the Court on appeal from an order granting in part and denying in part a motion to vacate a judgment of conviction of first-degree murder and a sentence of death under Florida Rule of Criminal Procedure 3.851.¹ We hereby dismiss this appeal because the guilt phase issues were waived since they were not briefed by Phillips, and the penalty phase issues were mooted by the new penalty phase ordered by the trial court pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *cert. denied*, 137 S. Ct. 2161 (2017). Because there will be a new

1. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.

penalty phase, it is inconsequential whether Phillips’s trial counsel was ineffective for failing to raise the issue of intellectual disability at the previous penalty phase. As the State argued, Phillips may raise the issue of intellectual disability at the trial court prior to his new penalty phase proceedings. *See Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (“A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.” (citing *Black’s Law Dictionary* 1008 (6th ed. 1990))).

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA,
and LAWSON, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Duval County,
Mallory D. Cooper, Judge - Case No. 162006CF015566AXXXMA

Frank Tassone of Tassone, Dreicer, & Hill, LLC, Jacksonville, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Jennifer A. Donahue, Assistant Attorney
General, Tallahassee, Florida,

for Appellee