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60  
Tunis

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

v.

CASE NO. F92-9940C

MARBEL MENDOZA,  
Defendant.

\_\_\_\_\_ /

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the DEFENDANT, MARBEL MENDOZA, takes

and enters his appeal to the Florida Supreme Court for review of the CORRECTED ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF AND AMENDED SUCCESSIVE MOTION TO VACATE entered by the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade, Florida, on June 14, 2017, and all other rulings, actions, or acts rendered adversely to the Defendant.

The nature of the order being appealed is a final judgment denying Appellant/Defendant's successive motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851.

Respectfully submitted,

/s/Rachel L. Day  
RACHEL L. DAY  
Assistant CCRC-South  
Fla. Bar No. 0068535

Capital Collateral Regional Counsel - South  
1 East Broward Boulevard, Suite 444  
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dayr@ccsr.state.fl.us

COUNSEL FOR MR. MENDOZA

STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office. JUL 12 2017  
HARVEY RUBIN, Clerk of Circuit and County Courts  
Deputy Clerk. *Richard Blaney*



*26476*

FILED  
JOHN A. TOMASINO  
JUL 17 2017  
CLERK, SUPREME COURT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been provided to the following  
by United States Mail and/or electronic service this 10th day of July, 2017.

/s/Rachel L. Day  
RACHEL L. DAY  
Assistant CCRC-South  
Fla. Bar No. 0068535

BRYAN E. MARTINEZ  
Staff Attorney  
Fla. Bar No. 0119286

Copies provided to:

The Honorable Daya J. Tunis  
Circuit Court Judge  
Richard E. Gerstein Justice Building  
1351 NW 12th St., #624  
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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

Case No. F92-9940C  
Section No. 10  
Judge TUNIS

2017 JUN 14 AM 11:34  
ERK, CLETT & COUNTY COURT  
MIAMI-DADE COUNTY, FL  
CIRCUIT CLERK #26

FILED FOR RECORD

vs.

MARBEL MENDOZA,  
Defendant

**ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE  
JUDGMENTS OF CONVICTION AND SENTENCE**

This cause came before this Court on Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence e-filed on March 13, 2017 and Amended Motion filed on May 2, 2017. The Court having read the motions and the State's responses, having reviewed the court file, conducted a *Huff* hearing, heard and read argument of counsel, and being otherwise duly advised hereby finds as follows:


The *Huff* Hearing was held on June 8, 2017. Defense counsel relied on their pleadings. Defense counsel further argued that neither *Hurst v. Florida*, --U.S--, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), nor *Hurst v. State*, 202 So.3d 40 (Fla. 2016), addressed the issue of whether *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), was retroactive. In *Asay v. State*, 210 So.3d 1 (Fla. 2016), The Supreme Court of Florida decided that *Hurst* was not retroactive to pre-*Ring* defendants. The defendant argued that the change is a substantive right, but with a procedural component. Additionally, he argued that The Supreme Court of Florida decision which created a bright line with regard to benefiting some but not all death

row inmates from the retroactivity of *Hurst*, is an arbitrary and capricious violation of the constitution.

The State also relied on their pleadings. This Court is bound by *Asay*. The Defendant is not entitled to the relief sought. Moreover, he is not entitled to retroactive application of the amended sentencing statute.

**WHEREFORE**, it is **ORDERED AND ADJUDGED** that the Defendant's Successive and Amended Successive Motions to Vacate Judgments of Conviction and Sentence are hereby **DENIED**.

**DONE AND ORDERED** in Miami-Dade County this 14<sup>th</sup> day of June, 2017.

  
Dava J. Tunis  
Circuit Court Judge

cc: Rachel Day, CCRC  
Marylin Muir Beccue, AAG  
Fleur Lobree, ASA

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**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

STATE OF FLORIDA,  
*Plaintiff,*

Case No. F92-9940C  
Section No. 10  
Judge TUNIS

vs.

MARBEL MENDOZA,  
Defendant

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FILED FOR F92-9940C  
2017 JUN 14 PM 12:21  
CLERK OF COURT  
STATE OF FLORIDA

**CORRECTED ORDER DENYING DEFENDANT'S SUCCESSIVE  
MOTION FOR POSTCONVICTION RELIEF AND AMENDED  
SUCCESSIVE MOTION TO VACATE**

This cause came before this Court on Defendant's Successive Motion for Postconviction Relief e-filed on March 13, 2017 and Amended Successive Motion to Vacate filed on May 2, 2017. The Court having read the motions and the State's responses, having reviewed the court file, conducted a *Huff* hearing, heard and read argument of counsel, and being otherwise duly advised hereby finds as follows:

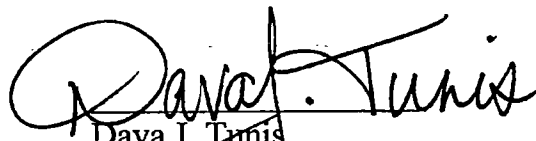
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decision which created a bright line with regard to benefiting some but not all death row inmates from the retroactivity of *Hurst*, is an arbitrary and capricious violation of the constitution.

The State also relied on their pleadings. This Court is bound by *Asay*. The Defendant is not entitled to the relief sought. Moreover, he is not entitled to retroactive application of the amended sentencing statute.

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**DONE AND ORDERED** in Miami-Dade County this 14<sup>th</sup> day of June, 2017.

  
Dava J. Tunis  
Circuit Court Judge

cc: Rachel Day, CCRC  
Marylin Muir Beccue, AAG  
Fleur Lobree, ASA