

Supreme Court of Florida

No. SC17-1399

ERNEST WHITFIELD,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 30, 2018]

PER CURIAM.

We have for review Ernest Whitfield's appeal of the circuit court's order denying Whitfield's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Whitfield's motion sought relief pursuant to the United States Supreme Court's decision in Hurst v. Florida, 136 S. Ct. 616 (2016), and our decision on remand in Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). This Court stayed Whitfield's appeal pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017).

After this Court decided Hitchcock, Whitfield responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Whitfield's response to the order to show cause, as well as the State's arguments in reply, we conclude that Whitfield is not entitled to relief. Whitfield was sentenced to death following a jury's recommendation for death by a vote of seven to five. Whitfield v. State, 706 So. 2d 1, 3 (Fla. 1997). Whitfield's sentence of death became final in 1998. Whitfield v. Florida, 525 U.S. 840 (1998). Thus, Hurst does not apply retroactively to Whitfield's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Whitfield's motion.

The Court having carefully considered all arguments raised by Whitfield, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.
PARIENTE, J., concurs in result with an opinion.
LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

An Appeal from the Circuit Court in and for Sarasota County,
George C. Richards, Judge - Case No. 581995CF001588XXXANC

Robert A. Norgard of Norgard, Norgard & Chastang, Bartow, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and C. Suzanne Bechard,
Assistant Attorney General, Tampa, Florida,

for Appellee