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Venzer

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff

CASE NO.: F-92-2141D

Vs.

RICARDO GONZALEZ

Defendant.

NOTICE OF APPEAL

COMES NOW, Ricardo Gonzalez, through undersigned counsel, and files this Notice of Appeal to the Florida Supreme Court the final Order of the Circuit Court, 11<sup>th</sup> Judicial Circuit, and Miami-Dade County, Florida. The nature of the order appealed is:

ORDER DENYING SUCCESSIVE MOTION TO VACATE DEATH SENTENCE  
(Dated July 12, 2017)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Notice of appeal has been filed via e-file portal and Served upon the office of Attorney General, and the Miami-Dade State Attorney, via same at [Capapp@myfloridalegal.com](mailto:Capapp@myfloridalegal.com), [Melissa.Roca@myfloridalegal.com](mailto:Melissa.Roca@myfloridalegal.com), [eservice@miamisao.com](mailto:eservice@miamisao.com) as well as the Honorable Judge Venzer this 9<sup>th</sup> day of August, 2017.

RESPECTFULLY SUBMITTED BY:

/S/ JEFFREY E. FEILER

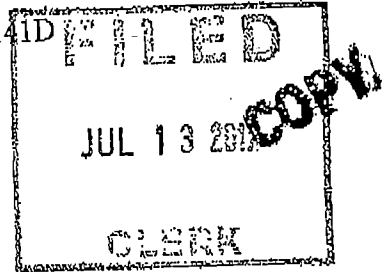
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FILED  
JOHN A. TOMASINO  
AUG 14 2017  
CLERK, SUPREME COURT  
BY

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

STATE OF FLORIDA,  
Plaintiff

CASE NO. F92-2141D



RICARDO GONZALEZ,  
Defendant.

ORDER DENYING SUCCESSIVE MOTION TO VACATE SENTENCE OF DEATH

This cause having come before the court on Defendant's Successive Motion to Vacate Sentence of Death and the court being fully advised, finds as follows:

Defendant filed a pro se Successive Motion to Vacate Sentence of Death dated January 11, 2017 and filed on January 24, 2017. Counsel then filed a successive motion on June 2, 2017, seemingly adopting the pro se motion and adding additional claims. The State filed a response on June 19, 2017. A *Huff* hearing was held on June 28, 2017.

In Claim I, Gonzalez (from pro se motion), alleges he is entitled to relief pursuant to *Hurst v. Florida*, 136 S.Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). In *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016), reh'g denied, No. SC16-102, 2017 WL 431741 (Fla. Feb. 1, 2017), the Florida Supreme Court held defendant's that death sentences that were final prior to *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed2d 556 (2007), are not entitled to retroactive application. Since *Asay*, the Florida Supreme Court has repeatedly held that *Hurst* does not apply retroactively to all death row inmates, only those whose death sentence was not final at the time of *Ring*.

In claim IB, counsel argues that Defendant should be entitled to a new penalty phase because the date for a new penalty phase should be based upon *Apprendi v. New Jersey*, 120 S.Ct. 2348 (2000). The Florida Supreme Court chose otherwise.

In Claim II, Gonzalez alleges that his death sentence should be vacated and he should be automatically be sentenced to life without parole pursuant to §775.082, Fla. Stat. The Florida Supreme Court rejected this argument in *Hurst v. State*.

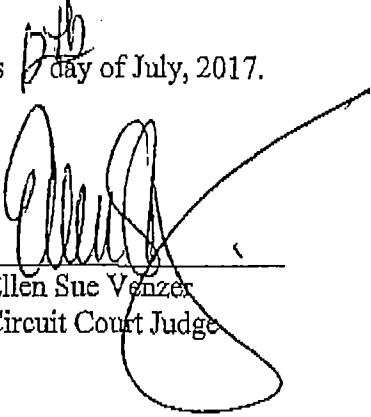
Accordingly, we hold that section 775.082(2) does not require commutation to life under the holding of *Hurst v. Florida*, which did not invalidate death as a penalty, but invalidated only that portion of the process which had allowed the necessary factfinding to be made by the judge rather than the jury in order to impose a sentence of death.

*Hurst v. State*, 202 So. 3d 40, 66 (Fla. 2016), cert. denied, No. 16-998, 2017 WL 635999 (U.S. May 22, 2017).

The remainder of the claims raised in both motions is denied for the reasons set forth in the State's Response.

WHEREFORE, it is ORDERED AND ADJUDGED that Defendant's Successive Motion to Vacate Sentence of Death is DENIED.

Done and Ordered in Miami-Dade County this <sup>17th</sup> day of July, 2017.

  
Ellen Sue Venzler  
Circuit Court Judge

Copies to:  
Jeffrey E. Feiler, counsel for Defendant  
Melissa Roca, AAG