

IN THE SUPREME COURT OF FLORIDA

JAMES DENNIS FORD,

Petitioner,

v.

JULIE L. JONES,

Respondent.

CASE NO. SC16-706  
DEATH PENALTY CASE

\_\_\_\_\_ /

RESPONSE TO PETITIONER'S MOTION TO TOLL TIME AND STAY CASE

COMES NOW, Respondent, Julie L. Jones, Secretary, Florida Department of Corrections, by and through the undersigned counsel, and responds to the motions filed by Petitioner herein seeking to delay this case.

This petition, premised on Hurst v. Florida, 136 S. Ct. 616 (2016), was filed on April 26, 2016. This Court has not requested a response to the petition. Notably, Ford's convictions and two death sentences became final on May 28, 2002, when the United States Supreme Court denied his petition for writ of certiorari from this Court's opinion on direct appeal. Ford v. State, 802 So. 2d 1121 (Fla. 2001), cert. denied, 535 U.S. 1103 (2002). Thus, Ford's sentences were final prior to the release of Ring v. Arizona, 536 U.S. 584 (2002), in June, 2002. In addition, Ford had never raised any claim in this Court regarding his Sixth Amendment right to a jury, any right to unanimity in the jury recommendation, or the propriety of the

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jury instructions provided at his trial until the filing of the instant petition.

Following this Court's opinion on remand of the Hurst case in Hurst v. State, 202 So. 3d 40 (Fla. 2016), Ford requested the opportunity to amend his petition, which this Court granted. Rather than amending his petition, however, Ford's counsel has now determined that he wants to pursue a successive motion for postconviction relief in the circuit court. He has asked this Court to hold this matter in abeyance and toll the time for him to file his amended petition. His requests should be denied.

Ford should not be granted the extravagance of filing pleadings in separate courts on the same meritless claim, then seeking further delay. Notwithstanding the fact that this Court held very clearly in Asay v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 7406538 (Fla. Dec. 22, 2016), that Hurst cannot be applied retroactively to death sentences that were final before the release of Ring, it is evident that precedent is no boundary for Ford and he would now appreciate the chance to convince a circuit court judge that this Court was erroneous in deciding Asay. Certainly the State has no avenue to prevent the filing of a frivolous successive postconviction motion, but this Court can and should limit the extent of meritless litigation in capital cases.

The rules of procedure governing criminal cases as well as appellate matters do not provide any avenue for relief for Mr. Ford. There is no authority in the rules to pursue a successive habeas petition, as Ford has done. Although the rules permit a successive postconviction motion when a new constitutional right has been held retroactive, since Asay refused to hold Hurst retroactive to Ford's case, he should not be encouraged to burden the circuit courts with successive motions, typically running seventy pages long, trying to explain why it is allegedly unfair to deprive Ford of Hurst relief.

In light of the critical decisions this Court has issued on the ramifications of Hurst v. Florida, it is apparent that many capital defendants are legitimately entitled to seek new sentencing proceedings. Having circuit courts disrupted and clogged with successive motions filed by defendants who have no legitimate claim -- those finalized prior to Ring, those with unanimous jury recommendations, and those that waived any jury participation in penalty -- will serve only to delay relief to those defendants for whom new sentencing proceedings may be deemed necessary under Mosley v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 7406506 (Fla. Dec. 22, 2016). This Court should take the opportunity presented in this case to address precisely how and when Hurst relief can be sought, and to enforce the procedural

rules adopted in this State for the benefit of all parties.

**CONCLUSION**

Respondent respectfully requests that this Honorable Court DENY the motion to hold this case in abeyance, as well as the motion to toll time for the filing of an amended petition. This Court should also explain and confirm that the limits of retroactivity announced in Asay will be enforced. If the rules cannot be applied to prohibit unauthorized pleadings, Ford should at least be limited to pursuing only one frivolous action at a time; he should either litigate the habeas petition pending in this Court or withdraw it and file his meritless successive motion in the circuit court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of January, 2017, I electronically filed the foregoing RESPONSE TO PETITIONER'S MOTION TO TOLL TIME AND STAY CASE with the Clerk of the Court by using the E-filing Portal which will send a notice of electronic filing to the following: Martin J. McClain, Esquire, McClain & McDermott, P.A., 141 N.E. 30th Street, Wilton Manors, Florida 33334, [martymcclain@earthlink.net](mailto:martymcclain@earthlink.net).

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.100(1).

Respectfully submitted,  
PAMELA JO BONDI  
ATTORNEY GENERAL

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