

IN THE CIRCUIT COURT OF SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418

STATE OF FLORIDA,
Plaintiff,

vs.

JOHN MARQUARD,
Defendant.

NOTICE OF APPEAL

Defendant, **JOHN MARQUARD**, takes and enters his appeal to the Supreme Court of Florida to review the Orders or Judgments of the Circuit Court of the Seventh Judicial Circuit, and any and all other rulings, or acts adverse to the Defendant in support of said judgment.

The nature of the Orders appealed from are the denial of Mr. Marquard's Second Successive Motion to Vacate Death Sentences, filed by attorney Ali A. Shakoor on January 9, 2017, pursuant to Florida Rule of Criminal Procedure 3.851. The order denying relief styled **ORDER DENYING DEFENDANT'S SECOND SUCCESSIVE MOTION TO VACATE DEATH SENTENCE**, was filed on March 31, 2017. Jurisdiction of this appeal is properly in the Supreme Court of Florida and this appeal is timely.

All parties to said cause are hereby notified of the entry of this appeal.

FILED
JOHN A. TOMASINO
MAY - 4 2017

CLERK, SUPREME COURT
BY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2017, I electronically filed the forgoing Notice of Appeal with the Clerk of the Court by using Florida Courts e-portal filing system which will send a notice of electronic filing to the following: Louise Pomar and Andrea Gorman, Court Reporting Services, lpomar@circuit7.org, stenographesr@circuit7.org; Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com, and CapApp@myfloridalegal.com; Assistant State Attorney Rosemary Calhoun, CalhounR@sao7.org, and the Honorable Howard M. Maltz, by way of Rebecca S. Helton, bhelton@sjccoc.us, . I further certify that I mailed the forgoing document to John Marquard, DOC#122995, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
ALI A. SHAKOOR
Florida Bar No. 0669830
Assistant CCC
CAPTIAL COLLATERAL REGIONAL
COUNSEL – MIDDLE REGION
12973 N. Telecom Parkway
Temple Terrace, FL 33637
(813) 558-1600

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418
DIVISION: 56

STATE OF FLORIDA,

vs.

JOHN CHRISTOPHER MARQUARD,
Defendant.

**ORDER ON DEFENDANT'S SECOND SUCCESSIVE MOTION
TO VACATE DEATH SENTENCE**

THIS CAUSE came before the Court on Defendant's "Second Successive Motion to Vacate Death Sentence" filed pursuant to Rule 3.851, Florida Rules of Criminal Procedure. The Court has reviewed and considered Defendant's Motion and the State's Response thereto, and has heard and considered the argument of counsel, and being otherwise fully advised in the premises finds as follows:

Defendant was charged with first-degree murder and armed robbery with a deadly weapon. A jury found Defendant guilty as to both counts and Defendant was sentenced on February 5, 1993, to death for the murder conviction and life in prison for the armed robbery conviction. Defendant appealed his first-degree murder conviction and death sentence, and the Supreme Court of Florida affirmed Defendant's conviction and sentence on June 9, 1994, rehearing denied, August 23, 1994. On November 21, 1994, Defendant filed a Petition for Writ of Certiorari

with the United States Supreme Court which was denied on January 23, 1995. Defendant filed his first Motion for Post-conviction Relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure on March 26, 1997, which included a special request for leave to amend. Thereafter, Defendant filed an amended Motion for Post-conviction Relief on February 22, 1999, raising eight grounds, including five claims alleging ineffective assistance of counsel. The Court held an evidentiary hearing on two of the grounds and summarily denied the remaining grounds. Following the evidentiary hearing, the Court denied the remaining grounds on December 21, 1999. Defendant appealed the Court's denial of his Post-conviction Motion to the Supreme Court of Florida, and while his appeal was pending, Defendant filed a Petition for Writ of Habeas Corpus with the Supreme Court of Florida. The Supreme Court of Florida affirmed the Court's denial of Defendant's Motion for Post-conviction Relief and denied the Petition for Writ of Habeas Corpus on November 21, 2002. Defendant's request for rehearing on the Petition for Habeas Corpus was denied on July 15, 2003. Subsequent thereto, Defendant filed a Petition for Writ of Habeas Corpus with the United States District Court, Middle District which was denied and dismissed with prejudice on January 18, 2005, which was affirmed by the United States Court of Appeals, Eleventh Circuit on November 10, 2005. Thereafter, Defendant filed a Petition for Writ of Certiorari with the United States Supreme Court which was denied on June 5, 2006. On September 12, 2007, Defendant filed a Successive Motion for Post-

conviction Relief pursuant to Rule 3.851 claiming newly discovered evidence. The Court held an evidentiary hearing on Defendant's motion on December 14, 2007 and rendered an order denying that motion on January 8, 2008.

Presently before the Court is Defendant's "Second Successive Motion to Vacate Death Sentence," filed January 9, 2017. The Defendant seeks to have his death sentence vacated pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So.3d 40 (Fla. 2016). Additionally, many of Defendant's arguments flow from some of the more nuanced matters inherent in Florida's post-*Hurst* retroactivity decisions, including whether a *Ring*-like challenge was previously raised, a distinction between the Sixth Amendment and Eighth Amendment issues addressed in *Hurst v. State*, substantive versus procedural rule changes, applicability of the Supremacy Clause, and the potentially arbitrary effects of using *Ring* as a bright-line cutoff for retroactivity. However, the Florida Supreme Court's recent decisions clearly establish that defendants whose judgments and sentences of death became final prior to the U.S. Supreme Court's decision in *Ring* are not entitled to relief via retroactive application of *Hurst v. Florida* and its Florida progeny.

Because the Defendant's judgment and sentence became final on January 23, 1995, before the *Ring v. Arizona*, 536 U.S. 583 (2002) opinion was issued on June 24, 2002, the Defendant is not entitled to retroactive *Hurst* relief. See *Asay v. State*, No. SC16-102, 2016 WL 7406538 at *13 (Fla. Dec. 22, 2016).

Alternatively, even if the Court were to apply *Hurst* retroactively in this case, the Defendant would not be entitled to relief because the jury's unanimous recommendation of death rendered any error harmless. In *Hurst v. State*, the Florida Supreme Court set out the requirements for a harmless error analysis based upon a *Hurst* claim: "Where the error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, 202 So. 3d at 68, citing *Zack v. State*, 753 So. 2d 9, 20 (Fla. 2000). In *Davis v. State*, the Florida Supreme Court applied this standard and found that the jury's unanimous recommendations of death "allow us to conclude beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." 207 So. 3d 142, 174 (Fla. 2016), *reh'g denied*, SC11-1122, 2017 WL 56089 (Fla. Jan. 5, 2017); *King v. State*, SC14-1949, 2017 WL 372081 (Fla. Jan. 26, 2017); *Knight v. State*, SC14-1775, 2017 WL 411329 (Fla. Jan. 31, 2017); *Kaczmar v. State*, SC13-2247, 2017 WL 410214 (Fla. Jan. 31, 2017); *Hall v. State*, SC15-1662, 2017 WL 526509 (Fla. Feb. 9, 2017); *Jones v. State*, SC14-990, 2017 WL 823600, at *16 (Fla. Mar. 2, 2017).

The Court also reasoned as follows:

Here, the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that Davis be sentenced to death for the murders of [the victims]. The

unanimous recommendations here are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death. Accordingly, Davis is not entitled to a new penalty phase.

Davis, 207 So. 3d at 175.

Here, the jury recommended death in Defendant's case after considering a full presentation of mitigating circumstances and aggravating factors. Additionally, as in *Davis*, the jury unanimously recommended death, despite being instructed that there was no requirement to do so. Further, the Court notes that the mitigation in this particular case was neither extensive nor compelling. For the aforementioned reasons, the Court concludes, beyond a reasonable doubt, that the jury unanimously made the requisite factual findings to support a death sentence before it returned the unanimous recommendations. Accordingly, the Court finds that although *Hurst* does not apply to Defendant's case, any *Hurst* error would have been harmless.

Finally, the timeliness of the instant motion turns on whether *Hurst v. Florida* and its Florida progeny have been held to apply retroactively to Defendant. Rule 3.851 (d) provides, in relevant part, that "any motion to vacate judgment of conviction and sentence of death shall be filed by the defendant within 1 year after the judgment and sentence become final" unless "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively." Fla. R. Crim. P. 3.851. Because

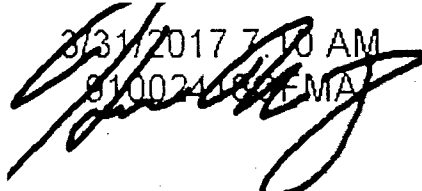
Hurst and the fundamental constitutional rights relied on by Defendant have not been held to apply retroactively to defendants whose judgment and sentence became final prior to *Ring*, the instant motion is untimely under Rule 3.851(d).

Defendant is not entitled to relief under any of his current claims, all of which depend upon a retroactive application of *Hurst*, because his judgment and sentence became final on January 23, 1995. Alternatively, the jury's unanimous recommendation of death following a full presentation of mitigating circumstances and aggravating factors renders any error harmless. Accordingly, it is:

ORDERED AND ADJUDGED that:

1. Defendant's "Second Successive Motion to Vacate Death Sentence" is hereby DENIED.
2. Defendant shall have 30 days from the date of this Order to appeal this Court's decision.

DONE AND ORDERED in chambers, in St. Johns County, Florida, on 31 day of March, 2017.



e-Signed 3/31/2017 7:10 AM
91002418CFMA

CIRCUIT JUDGE

Copies furnished to:

Stacey E. Kircher, Asst. Attorney General
Stacey.Kircher@myfloridalegal.com; CapApp@myfloridalegal.com

Rosemary Calhoun, Asst. State Attorney
calhounr@sao7.org; eservicestjohns@sao7.org

Ali A. Shakoor, Asst. CCR
shakoor@ccmr.st.fl.us; cbus03@gmail.com; support@ccmr.state.fl.us

CERTIFICATE OF CLERK

**STATE OF FLORIDA
COUNTY OF ST. JOHNS**

I, **HUNTER S. CONRAD**, Clerk Circuit Court, Seventh Judicial Circuit of Florida, in and for St. Johns County, Florida, **DO HEREBY CERTIFY** that the above and foregoing is a true and correct copy of Notice of Appeal:

JOHN MARQUARD
Appellant,

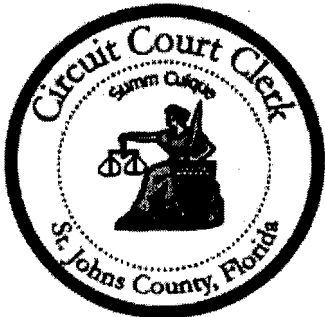
Vs.

STATE OF FLORIDA,
Appellee.

Case No.: 91002418CF

as the same appears on record in the office of the Clerk of the Circuit Court, St. Johns County, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 2ND day of May, 2017.



**HUNTER S. CONRAD
CLERK CIRCUIT COURT**

By 

Nicole Cooper, Deputy Clerk

**CIRCUIT COURT,
7th JUDICIAL CIRCUIT,
ST. JOHNS COUNTY, FLORIDA**

JOHN MARQUARD
Appellant

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO: 91002418CF

VS

STATE OF FLORIDA
Appellee

DIVISION: 56

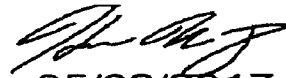
ORDER OF INSOLVENCY FOR APPEAL PURPOSES

THIS CAUSE having come before the court upon the Defendant's motion, and the court having reviewed said cause, determines that the defendant is an insolvent person. It is therefore:

ORDERED AND ADJUDGED by the Court as follows:

1. The Defendant is hereby adjudged to be currently indigent for the purpose of Appeal and is entitled to proceed in the appellate court without further application to the court and without either the prepayment of fees or costs in this tribunal or the giving of security therefore.
2. The court reporter is hereby directed to transcribe the proceedings in said cause as designated by the Defendant unless otherwise ordered by this Court or Appellate Court.
3. The cost of transcribing said proceedings shall be borne by the State of Florida.

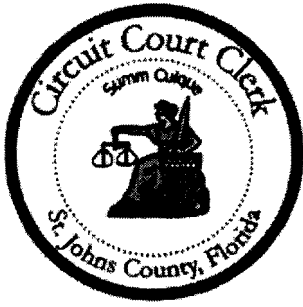
DONE AND ORDERED in Chambers at St. Augustine, St. Johns County, Florida, this
_____ day of May 2017.



05/02/2017

Howard M Maltz, Circuit Judge

cc: Defendant
Court Reporters



Hunter S. Conrad
Clerk of the Circuit Court
4010 Lewis Speedway
St. Augustine, Florida 32084
(904) 819-3600 ext 4488

May 2, 2017

Hon. John Tomasino, Clerk
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

JOHN MARQUARD

Appellant

vs

STATE OF FLORIDA

Appellee


CLERK, SUPREME COURT

BY _____
J. T. Case No.: 91002418CF

Dear Mr. Tomasino:

I am herewith enclosing a certified copy of the Notice of Appeal in the aforementioned case. The attached Notice of Appeal was filed April 28, 2017.

Sincerely,
Hunter S. Conrad, Clerk of Circuit Court

By: 
Nicole Cooper, Deputy Clerk

cc: Ali A. Shakoor
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, FL 33637

Hon. Pam Bondi, Atty General
Department of Legal Affairs
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32118

FILED
JOHN A. TOMASINO
MAY - 4 2017