**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

**CASE NO. 1996-CF-005639-A-O
CRIMINAL DIVISION**

STATE OF FLORIDA,

Plaintiff,

v.

STEVEN MAURICE EVANS,

Defendant.
_____/

NOTICE OF APPEAL

NOTICE IS GIVEN that **STEVEN MAURICE EVANS,** the Defendant, by and through undersigned counsel, takes and enters his Notice of Appeal to the Supreme Court of Florida to review the final order of the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, dated March 24, 2017, denying Mr. Evans' Successive Motion to Vacate Judgment of Conviction and Sentence. His Motion for Rehearing was denied April 10, 2017.

The nature of the Order appealed from is a denial of relief sought under Fla. R. Crim. P. 3.851 and the denial of rehearing.

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

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 9th day of May, 2017, we electronically filed the foregoing with the Clerk of the Court by using the E-Portal Filing System which will send a notice of electronic filing to the following: Honorable Lisa T. Munyon, Circuit Judge, Ninth Judicial Circuit Court, ctjals1@ocnjcc.org, to Kenneth Nunnelley, Assistant State Attorney, Office of the State Attorney for the Ninth Judicial Circuit, KNunnelley@sao9.org, Stephen D. Ake, Assistant Attorney General, Assistant Attorney General, Office of the Attorney, stephen.ake@myfloridalegal.com, and by U.S Mail to Steven Maurice Evans , DOC# 330290; Union Correctional Institution, 7819 NW 228th Street, Raiford, Florida 32026.

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

STEVEN MAURICE EVANS,

Defendant.
_____/

CASE NO.: 1996-CF-005639-A-O
CIRCUIT CRIMINAL DIVISIONS - FELONY

ORDER DENYING "FIRST SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE"

THIS MATTER is before the Court on Defendant's "First Successive Motion to Vacate Judgment of Conviction and Sentence" filed on January 9, 2017, pursuant to Florida Rules of Criminal Procedure 3.850 and 3.851. After reviewing Defendant's Motion, the State's Response, the court file, and the record, and conducting a Case Management Conference on March 16, 2017, the Court finds that Defendant is not entitled to relief.

PROCEDURAL HISTORY

On April 8, 1999, Defendant was convicted of first-degree murder and kidnapping. On April 15, 1999, the jury recommended the death penalty by a vote of 11-1. On June 7, 1999, he was sentenced to death for first-degree murder and 121.25 months in the Department of Corrections for kidnapping. He appealed, and the Florida Supreme Court affirmed. *Evans v. State*, 800 So. 2d 182 (Fla. 2001). The Mandate was issued on December 10, 2001.

On October 16, 2002, Defendant filed a Motion to Determine Competency and a Motion for Postconviction Relief, and concurrently filed a Petition for Writ of Habeas Corpus with the Florida Supreme Court. On October 23, 2003, this Court entered an order finding Defendant competent to proceed. On December 18, 2003, Defendant filed an Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, and a Motion to Submit Late Verification and/or Motion to Determine Present Competency. The State filed a response on February 16, 2004. The Court held a case management conference on April 8, 2004, and conducted an evidentiary hearing from August 30, 2004, to September 2, 2004. On November 8, 2004, the Court denied the Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, and denied the Motion to Submit Late Verification and/or Motion to Determine Present Competency as moot. He filed a Motion for

Rehearing on November 24, 2004, which was denied on December 20, 2004. The Florida Supreme Court affirmed, and denied habeas relief. *Evans v. State*, 975 So. 2d 1035 (Fla. 2007).

ANALYSIS AND RULING

In the instant Motion, Defendant requests that the Court vacate and set aside his death sentence, alleging six claims for relief.

Motions under Florida Rule of Criminal Procedure 3.851 generally must be filed within one year of the date the judgment and sentence become final. Fla. R. Crim. P. 3.851(d). Defendant does not address this time limitation in his Motion, but argues that the Florida Supreme Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), renders his death sentence unconstitutional. Rule 3.851(d)(2)(B) provides an exception to the one-year time limitation where the fundamental constitutional right asserted was not established within the one-year window *and* has been held to apply retroactively. Thus, the timeliness of the instant Motion turns on whether *Hurst* has been held to apply retroactively to Defendant.

Claim 1: Defendant contends that his sentence is unconstitutional based on *Hurst v. Florida* because he was denied his right to a jury trial on the facts that led to his death sentence in violation of the Sixth Amendment.

In its response, the State argues that *Hurst* does not apply retroactively to capital defendants whose convictions and sentences were final before the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002); therefore, Defendant's claim is procedurally barred.

In *Ring*, the United States Supreme Court held that the Sixth Amendment requires that aggravating factors be found by a jury for imposition of the death penalty in capital cases. 536 U.S. at 589, 609. In *Hurst*, the United States Supreme Court extended its holding in *Ring* to Florida's death penalty procedures for the first time, and held that the Sixth Amendment right to a jury trial rendered those procedures unconstitutional because they allowed a judge to make the

necessary findings to impose a death sentence. 136 S. Ct. at 619, 624. The United States Supreme Court did not address retroactive application of its *Hurst* decision. However, the Florida Supreme Court ruled that *Hurst* does not apply retroactively to cases that were final before *Ring* was decided on June 24, 2002. *Asay v. State*, No. SC16-223, 2016 WL 7406538, at *13 (Fla. Dec. 22, 2016); *see also Gaskin v. State*, No. SC15-1884, 2017 WL 224772, at *2 (Fla. Jan. 19, 2017); *Bogle v. State*, No. SC11-2403, 2017 WL 526507, at *16 (Fla. Feb. 9, 2017).

The Court agrees with the State, and concludes that it is bound by the Florida Supreme Court's rulings. Here, Defendant's judgment and sentence became final on or about March 11, 2002, the expiration of the time permitted to file a petition for writ of certiorari seeking review of the Florida Supreme Court decision affirming his judgment and sentence (ninety days after the opinion became final on December 10, 2001). Fla. R. Crim. P. 3.851(d)(1)(A). Therefore, because Defendant's judgment and sentence were final prior to the *Ring* decision, he is not entitled to the retroactive application of *Hurst*.

The Court points out that Defendant argued at the Case Management Conference that his judgment and sentence became final on May 1, 2002. This date, too, however, pre-dates the *Ring* decision of June 24, 2002. Defendant also argued that he filed a petition for writ of certiorari on March 11, 2002, in which he cited to *Ring* issues and therefore preserved those issues. However, according to the April 22, 2002 United States Supreme Court letter filed by the State, that petition was never actually filed. Thus, the Court finds no merit to these arguments.

Because the fundamental constitutional rights relied upon by Defendant have not been held to apply retroactively to this case, the instant Motion is untimely under Rule 3.851(d). Claim 1 is therefore denied.

Claim 2: Defendant contends that his sentence violates the Eighth and Fourteenth Amendments because it is contrary to evolving standards of decency and is arbitrary and capricious in light of *Hurst*.

As stated in Claim 1 above, Defendant is not entitled to retroactive application of *Hurst*. Claim 2 is therefore denied.

Claim 3: Defendant contends that the fact-finding that subjected him to death was not proven beyond a reasonable doubt as mandated by *Hurst*.

As stated in Claim 1 above, Defendant is not entitled to retroactive application of *Hurst*. Claim 3 is therefore denied.

Claim 4: Defendant contends that his sentence was obtained in violation of the Florida Constitution because it was imposed without unanimous jury findings regarding aggravating factors in light of *Hurst*. He also claims that he was denied his right to a proper grand jury indictment because the aggravating factors were not contained in the indictment.

As stated in Claim 1 above, Defendant is not entitled to retroactive application of *Hurst*. Furthermore, as the State asserts in its response, the Florida Supreme Court has rejected claims that aggravating factors are required to be alleged in an indictment. *See Ferrell v. State*, 918 So. 2d 163, 180 (Fla. 2005). Claim 4 is therefore denied.

Claim 5: Defendant contends that the denial of his prior postconviction claims must be reheard and determined under a constitutional framework in light of *Hurst*.

Defendant offers no authority to support his request for a rehearing of claims raised in his previous motion, and this Court finds none. Defendant's prior claims were denied on the merits and affirmed by the Florida Supreme Court. *Evans*, 975 So. 2d 1035. Furthermore, as stated in Claim 1 above, Defendant is not entitled to retroactive application of *Hurst*. Claim 5 is therefore denied.

Claim 6: Defendant contends that none of the errors pleaded in this case were harmless, and that the Florida Supreme Court has allowed a harmless error analysis in determining whether to grant relief following *Hurst* and subsequent cases.

The Court agrees with the State that the harmless error analysis is inapplicable in this case. Defendant relies upon eleven cases cited in his Notice of Supplemental Authority to support his harmless error claim. However, all of those cases are distinguishable because the Florida Supreme Court specifically determined that *Hurst* applied, either retroactively because the convictions became final post-*Ring* or because the convictions were not yet final when *Hurst* was decided. Here, as stated in Claim 1 above, *Hurst* does not apply. Thus, this Court is not required to determine whether any violation of *Hurst* was harmless. Claim 6 is therefore denied.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's "First Successive Motion to Vacate Judgment of Conviction and Sentence" is **DENIED**.

2. Defendant may file a notice of appeal in writing within **thirty (30) days** of the date of rendition of this Order.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 24th day of March, 2017.

LISA T. MUNYON
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail or hand delivery to **James L. Driscoll, Jr.**, **David Dixon Hendry**, **Gregory W. Brown**, Attorneys for Defendant, Capital Collateral Regional Counsel - Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637; **Tayo Popoola, Assistant Attorney General**, Office of the Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118; and to **Kenneth Nunnelley, Assistant State Attorney**, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801, on this 24 day of March, 2017.

Lisa Slorter
Judicial Assistant

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

STEVEN MAURICE EVANS,

Defendant.
_____/

CASE NO.: 1996-CF-005639-A-O
CIRCUIT CRIMINAL DIVISIONS -
FELONY

ORDER DENYING "MOTION FOR REHEARING"

THIS MATTER is before the Court on Defendant's "Motion for Rehearing" filed on April 7, 2017, pursuant to Florida Rule of Criminal Procedure 3.851(f)(7). After reviewing Defendant's Motion, the court file, and the record, the Court finds as follows:

PROCEDURAL HISTORY

On April 8, 1999, Defendant was convicted of first-degree murder and kidnapping. On April 15, 1999, the jury recommended the death penalty by a vote of 11-1. On June 7, 1999, he was sentenced to death for first-degree murder and 121.25 months in the Department of Corrections for kidnapping. He appealed, and the Florida Supreme Court affirmed. *Evans v. State*, 800 So. 2d 182 (Fla. 2001). The Mandate was issued on December 10, 2001.

On October 16, 2002, Defendant filed a Motion to Determine Competency and a Motion for Postconviction Relief, and concurrently filed a Petition for Writ of Habeas Corpus with the Florida Supreme Court. On October 23, 2003, this Court entered an order finding Defendant competent to proceed. On December 18, 2003, Defendant filed an Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, and a Motion to Submit Late Verification and/or Motion to Determine Present Competency. The State filed a response on February 16, 2004. The Court held a case management conference on April 8, 2004, and conducted an evidentiary hearing from August 30, 2004, to September 2, 2004. On November 8, 2004, the Court denied the Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, and denied the Motion to Submit Late Verification and/or Motion to Determine Present Competency as moot. He filed a Motion for Rehearing on November 24, 2004, which was denied on December 20, 2004. The Florida Supreme Court affirmed, and denied habeas relief. *Evans v. State*, 975 So. 2d 1035 (Fla. 2007).

On January 9, 2017, Defendant filed a First Successive Motion to Vacate Judgment of Conviction and Sentence pursuant to Rules 3.850 and 3.851. The motion was denied on March 24, 2017.

ANALYSIS AND RULING

In the instant Motion, Defendant alleges that the Court overlooked the Equal Protection Clause of the Fourteenth Amendment "by strictly adhering to an arbitrary and capricious cutoff date announced in *Asay v. State*, 210 So. 3d 1 (Fla. 2016)." He requests an evidentiary hearing to glean why appellate counsel failed to refile a petition for writ of certiorari, which he alleges would have entitled him to relief under *Hurst v. Florida*, 136 S. Ct. 616 (2016).

The Court finds that a rehearing is not warranted. First, "[a] motion for rehearing shall not reargue the merits of the Court's order" and "shall not present issues not previously raised in the proceeding." *Jacobs v. Wainwright*, 450 So. 2d 200, 201 (Fla. 1984); Fla. R. App. P. 9.330(a). Second, the Court finds that the March 24, 2017 order adequately refutes the January 9, 2017 motion. The Court stands by its ruling and the reasons set forth in support thereof, and declines to find that there are any facts it overlooked or points of law it misapprehended in reaching this ruling.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's "Motion for Rehearing" is **DENIED**.
2. Defendant may file a notice of appeal in writing within **thirty (30) days** of the date of rendition of this Order.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 10 day of April, 2017.

LISA T. MUNYON
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail or hand delivery to **James L. Driscoll, Jr.**, **David Dixon Hendry**, **Gregory W. Brown**, Attorneys for Defendant, Capital Collateral Regional Counsel - Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637; **Tayo Popoola, Assistant Attorney General**, Office of the Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118; and to **Kenneth Nunnelley, Assistant State Attorney**, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801, on this 10 day of April, 2017.

Lisa Shorten
Judicial Assistant