

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

CASE NO.: 1994-CF-7132

**STATE OF FLORIDA,
Plaintiff,**

vs.

**THOMAS GUDINAS,
Defendant.**

_____ /

NOTICE OF APPEAL

Defendant, **THOMAS GUDINAS**, takes and enters his appeal to the Supreme Court of Florida to review the Orders or Judgments of the Circuit Court of the Ninth 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. Gudinas'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 29, 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.

FLORIDA SUPREME COURT

05/18/2017

RECEIVED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 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: Tayo Popoola, Assistant Attorney General, tayo.popoola@myfloridalegal.com, and CapApp@myfloridalegal.com; Kenneth Nunnelley, eservicemarion@sao9.org; Brad King eservice@sao5.org; and the Honorable A. James Craner. I further certify that I mailed the forgoing document to Thomas Gudinas, DOC#379799, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 1994-CF-7132

Plaintiff,

vs.

THOMAS GUDINAS,

Defendant.

_____ /

**ORDER DENYING SECOND SUCCESSIVE MOTION
TO VACATE DEATH SENTENCE**

THIS MATTER came before this Court for consideration of Defendant Thomas Gudinas' Second Successive Motion to Vacate Death Sentence filed on January 9, 2017, pursuant to Florida Rule of Criminal Procedure 3.851. Having reviewed the Motion, file, and record of the case, along with the State's February 17, 2017, Response, and having conducted a case management hearing on March 17, 2017, the Court finds that Mr. Gudinas is not entitled to relief.

Procedural History

On July 15, 1994, Mr. Gudinas was indicted by a grand jury for first-degree murder, two counts of sexual battery, attempted sexual battery, and attempted burglary with an assault. Following a jury trial on May 1-4, 1995, he was found guilty on all counts. After a penalty phase proceeding was conducted on May 8-10, 1995, the jury recommended death for the murder charge by a vote of ten to two.

On June 16, 1995, the Court imposed the death penalty, finding three statutory aggravating circumstances: (1) Defendant had been convicted of a prior violent felony; (2) the murder was committed during the commission of a sexual battery; and (3) the

murder was especially heinous, atrocious, or cruel.¹ On April 10, 1997, the Florida Supreme Court affirmed. *Gudinas v. State*, 693 So. 2d 953 (Fla. 1997). The United States Supreme Court denied Mr. Gudinas' subsequent petition for writ of certiorari on October 20, 1997. *Gudinas v. State*, 522 U.S. 936 (1997).

Mr. Gudinas filed a Rule 3.850 postconviction motion on June 5, 1998, an amended motion on July 19, 1999, and a second amended motion on September 30, 1999. On December 17, 1999, an evidentiary hearing was held on three of his claims, and on March 20, 2000, the Court entered an order denying relief on all grounds. Simultaneously with his direct appeal, he filed a petition for writ of habeas corpus. On March 28, 2002, the Florida Supreme Court denied relief on all grounds raised both on appeal and in the petition for writ of habeas corpus. *Gudinas v. State*, 816 So. 2d 1095 (Fla. 2002).

On October 14, 2002, Mr. Gudinas filed a successive Rule 3.851 postconviction motion challenging, *inter alia*, his death sentence in light of the decision in *Ring v. Arizona*, 536 U.S. 584 (2002). The motion was denied on January 7, 2003, and on May 13, 2004, the Florida Supreme Court affirmed. *Gudinas v. State*, 879 So. 2d 616 (Fla. 2004).

On October 15, 2002, Mr. Gudinas filed a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and thereafter amended it. The amended petition was denied on September 30, 2010. *Gudinas v. McNeil, Sec'y, Dept. of Corr.*, 2010 WL 3835776 (M.D. Fla. Sept. 30, 2010).² Mr. Gudinas appealed the denial to the United States Court of Appeals for the Eleventh Circuit and that court affirmed the ruling of the Middle District Court of Appeal in an unpublished opinion on July 29, 2011. *Gudinas v. Secretary, Dept. of Corrections*, 436 Fed Appx. 895 (11th Cir. 2011). His subsequent petition for writ of certiorari, filed in the United States Supreme Court, was denied on March 5, 2012. *Gudinas v. Tucker*, 565 U.S. 1247 (2012).

Instant Motion

Mr. Gudinas now raises the following claims:

1. His death sentence is unconstitutional based on *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), because he did not receive a unanimous jury

¹ Mr. Gudinas was also adjudicated a habitual violent felony offender and sentenced to life in prison for the sexual batteries and thirty years in prison for the attempted burglary with an assault and attempted sexual battery.

² Due to the age of this case, only the Westlaw citation is available.

recommendation for death and the State cannot show that there is no reasonable possibility this error did not contribute to his sentence.

2. His death sentence violates the Eighth Amendment because it is contrary to evolving standards of decency and was the product of an arbitrary and capricious system and not unanimous jury findings.
3. In light of *Hurst v. Florida*, 136 S. Ct. 616 (2016), *Perry v. State*, No. SC16-547, 41 Fla. L. Weekly S449 (Fla. Oct. 14, 2016), and *Hurst v. State*, his death sentence violates the Florida Constitution, because no aggravating factors were presented to the jury for its consideration in determining whether to indict him and he was never formally informed of the full “nature and cause of the accusation” against him
4. In light of *Hurst v. State* and *Perry*, the Court must revisit his previous postconviction claims and determine whether evidence presented to support each claim and all other admissible evidence at a resentencing proceeding would probably result in a life sentence.
5. His death sentence should be vacated because the fact-finding that subjected him to the death penalty was not proven beyond a reasonable doubt.

Claims 1-3, 5: In its Response, the State argues the *Hurst* opinions do not apply retroactively to defendants whose death sentences became final before the United States Supreme Court issued its opinion in *Ring*, and therefore his claims are procedurally barred.

In *Hurst v. Florida*, the United States Supreme Court’s holding in *Ring* was extended to Florida’s death penalty procedures, holding that the Sixth Amendment right to a jury trial rendered those procedures unconstitutional because they allowed a judge to make the necessary findings to render a death penalty. *Asay v. State*, No. SC16-223, 41 Fla. L. Weekly S646 (Fla. Dec. 22, 2016); *Gaskin v. State*, No. SC15-1884, 42 Fla. L. Weekly S16 (Fla. Jan. 19, 2017); *Bogle v. State*, No. SC11-2403, 2017 WL 526507 (Fla. Feb. 9, 2017).



The Court finds the State's arguments are well taken and concludes it is bound by the Florida Supreme Court's rulings. Accordingly, because Mr. Gudinas' sentence became final in 1997 when the United State Supreme Court denied his petition for writ of certiorari, he is not entitled to a retroactive application of *Hurst v. Florida* and *Hurst v. State*.

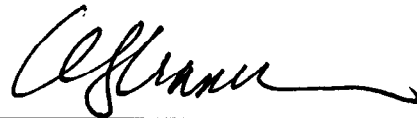
Claim 4: Mr. Gudinas does not offer any persuasive authority supporting his request for rehearing the claims raised in his previous motions, especially considering that those claims have no relationship to the *Hurst* opinions regarding unanimous jury findings. This Court finds that his prior claims were denied on the merits and affirmed by the Florida Supreme Court as previously set out in this Order. Additionally, as correctly argued by the State, Mr. Gudinas' reliance on *Hildwin v. State*, 141 So. 3d 1178 (Fla. 2014) and *Swafford v. State*, 125 So. 3d 760 (Fla. 2013) is misplaced because neither case can be read as resurrecting previously denied legal claims; instead, they require a cumulative analysis of all the evidence when a claim of newly discovered evidence is raised and concern the treatment of that evidence, neither of which forms the basis of a *Hurst* claim. Furthermore, his argument that he is entitled to develop evidentiary material for use at a resentencing proceeding is unavailing under *Hurst, et al*, as none of the defendants in these death penalty cases were afforded an opportunity to do that following a purported *Hurst* error.

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

1. Defendant Thomas Gudinas' Second Successive Motion to Vacate Death 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.

3. The Clerk of the Court shall promptly serve a copy of this Order upon Defendant including an appropriate certificate of service.

DONE AND ORDERED in Chambers, in Orlando, Orange County, Florida the 29 day of March 2017.


A. JAMES CRANER
Circuit Court Judge

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 29 day of March 2017, a true and correct copy of the foregoing Order was provided via U.S. Mail/electronic mail to the following parties of record:

 Tayo Popoola, Esquire, Assistant Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, Florida 32118 at capapp@myfloridalegal.com; tayo.popoola@myfloridalegal.com;

 Kenneth Nunnelley, Esquire, Assistant State Attorney, 415 N. Orange Avenue, Suite 300, Orlando, Florida 32801 at knunnelley@sao9.org and PCF@sao9.org;

 Ali A. Shakoor, Esquire, Assistant Capital Collateral Regional Counsel – Middle Region, 12973 N. Telecom Parkway, Temple Terrace, Florida 33637 at shakoor@ccmr.state.fl.us and support@ccmr.state.fl.us; and

 Thomas Gudinas, DOC # 379799, Union Correctional Institution, P. O. Box 1000, Raiford, Florida 32083.


Judicial Assistant

