

FLORIDA SUPREME COURT

05/18/2017

RECEIVED

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

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: 93-CF-9667

POSTCONVICTION CAPITAL CASE

SONNY RAY JEFFRIES,

Defendant.

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN that Sonny Ray Jeffries, the Defendant/Appellant, appeals to the Supreme Court of Florida the final order rendered by this Court on March 28, 2017. The nature of the order is a final order denying Defendant's Successive Motion to Vacate Death Sentence pursuant to Florida Rule of Criminal Procedure 3.851.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the PDF document of the foregoing has been transmitted to this Court through the Florida Courts E-Filing Portal on this 27th day of April, 2017.

I HEREBY FURTHER CERTIFY that a true copy of the foregoing was served via electronic mail to the **Honorable Frederick J. Lauten**, Chief Judge, Ninth Judicial Circuit, 425 North Orange Avenue, Orlando, Florida 32801, at ctsaw1@ocnjcc.org; **Stephen D. Ake**, Assistant Attorney General, Office of the Attorney General, Concourse Center 4, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-7013, at stephen.ake@myfloridalegal.com and capapp@myfloridalegal.com; and **Kenneth Nunnelley**, Office of the State Attorney for the Ninth Judicial Circuit, 415 North Orange Avenue, Third Floor, Orlando, Florida 32801, at knunnelley@sao9.org and PCF@sao9.org on this 27th day of April, 2017.

I HEREBY FURTHER CERTIFY that a copy of the foregoing has been mailed to **Sonny Ray Jeffries**, DOC#X18736, Union Correctional Institution, P.O. Box 1000, Raiford, Florida 32083, on this 27th day of April, 2017.

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State of Florida, County of Orange

I hereby certify that the foregoing is a true and correct copy of the instrument filed in this office.
Confidential or sealed items, if any, have been removed per Fla.R.Jud.Admin.2.420.

Witness my hand and official seal this 05/18/17. Tiffany M. Russell, Clerk of the Circuit Court

By: /s/ Christine Choong

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

STATE OF FLORIDA,

Plaintiff,

vs.

SONNY RAY JEFFRIES,

Defendant.

CASE NO.: 1993-CF-9667-A-O
DIVISION:

**ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION
TO VACATE DEATH SENTENCE**

THIS MATTER came before the court on Defendant's Successive Motion to Vacate Death filed on January 9, 2017, pursuant to Florida Rule of Criminal Procedure 3.851. Upon review of Defendant's Motion, the State's Answer filed on January 30, 2017, the court file, and the record, and having held a case management conference on February 28, 2017, the Court finds and concludes as follows:

PROCEDURAL HISTORY

On April 23, 1998, following a jury trial, Defendant was found guilty as charged to First Degree Murder (count 1) and Armed Robbery (count 2), and not guilty of Armed Burglary of a Dwelling (count 3). On September 8, 1998, the penalty phase of the jury trial began.

On September 9, 1998, Defendant was adjudicated guilty of count 1 and count 2, and the jury recommended death by an 11-1 vote. On October 15, 1998, a *Spencer* hearing was held. On January 22, 1999, a sentence of death was imposed. The Florida Supreme Court affirmed Defendant's judgment and sentence on appeal with the mandate issued on October 9, 2001. *Jeffries v. State*, 797 So. 2d 573 (Fla. 2001).

On January 9, 2017, Defendant filed the instant Successive Motion to Vacate Death. The State's Answer was filed on January 30, 2017. On February 21, 2017, Defendant filed a Notice of Supplemental Authority. On February 22, 2017, the State filed a Notice of Supplemental Authority. A case management conference was held on February 28, 2017.

DEFENDANT'S MOTION

On January 9, 2017, capital collateral counsel filed a Successive Motion to Vacate Death Sentence pursuant to Florida Rule of Criminal Procedure 3.851 based on the United States Supreme Court's ruling in *Hurst v. Florida*, 136 S.Ct. 616 (2016) and the Florida Supreme Court's ruling in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016).¹

Claim 1: *Hurst* Sixth Amendment Violation. Defendant alleges the Sixth Amendment right enunciated in *Hurst* guarantees that before a judge can impose a death sentence the jury's recommendation of death must be unanimous, and the jury must unanimously find the aggravating factors were proven beyond a reasonable doubt, the aggravators are sufficient to impose a death sentence, and the aggravating factors outweigh the mitigating circumstances. Defendant claims under *Witt v. State*, 387 So. 2d 922 (Fla. 1980), the *Hurst* decision must be applied retroactively because 1) the decision emanated from the United States Supreme Court; 2) it is constitutional in nature; and 3) it is a development of fundamental significance causing substantial and substantive upheaval.

Defendant acknowledges *Asay* suggests that cases final before *Ring* are not entitled to retroactive application of *Hurst*, but argues denying him retroactive application of the substantive findings required by *Hurst* would deny him due process and equal protection under the federal constitution and the Florida Constitution.² Defendant alleges the Sixth Amendment *Hurst* error in his case was not harmless error, the 11-1 vote was not unanimous, and even a unanimous vote would not mandate a finding of harmless error. He claims the jury did not make any findings of fact and the jury was not properly advised as to the weight of its responsibility citing *Caldwell v. Mississippi*, 472 U.S. 320 (1985). Defendant further alleges trial counsel

¹ Defendant also cites to "*Perry v. State*, 41 Fla. L. Weekly S449 (Fla. October 14, 2016), *Asay v. State*, 41 Fla. L. Weekly S646 (Fla. December 22, 2016), and *Mosley v. State*, 41 Fla. L. Weekly S629a (Fla. Dec. 22, 2016) and the enactment of Chapter 2016-13 on March 7, 2016." The defense also cites cases in the Notice of Supplemental Authority filed February 21, 2017, as support for Defendant's claim that he is entitled to a new penalty phase.

² *Ring v. Arizona*, 536 U.S. 584 (2002).

would have tried the case differently under *Hurst* and resulting new Florida law and requests an evidentiary hearing to present the testimony of trial/standby counsel.

Claim 2: *Hurst* Eighth Amendment Violation. Defendant alleges under *Hurst*, his death sentence violates the Eighth Amendment of the United States Constitution and corresponding provisions of the Florida Constitution because it was not the product of unanimous jury findings. He cites the Florida Supreme Court's *Hurst* finding that under the Eighth Amendment evolving standards of decency as reflected in national consensus now require unanimity for a death sentence to be imposed. *Hurst*, 202 So. 3d. at 60-61. Defendant alleges that under the Eighth Amendment, he is a member of the protected class of defendants who did not have a unanimous jury recommendation of death and therefore cannot be sentenced to death, and claims his execution would amount to cruel and unusual punishment. Defendant does not request an evidentiary hearing on claim 2.

STATE'S ANSWER

The State asserts the Motion should be summarily denied because the Florida Supreme Court has determined that *Hurst* does not apply to capital defendants whose sentences were final before *Ring* citing *Asay*, *Mosley*, and *Gaskin v. State*, 42 Fla. L. Weekly S16 (Fla. January 19, 2017).³

Claim 1: *Hurst* Sixth Amendment Violation. The State alleges claim 1 is untimely, procedurally barred, and cannot be applied retroactively. The State asserts Defendant's case became final January 9, 2002, 90 days after the Florida Supreme Court issued its mandate on October 9, 2001. The State argues the United States Supreme Court extended the *Hurst* holding to its decision in *Ring* on June 24, 2002, which occurred after Defendant's case was final,

³ On February 22, 2017, the State filed a Notice of Supplemental Authority citing to *Bogle v. State*, 42 Fla. L. Weekly S166a (Fla. Feb. 9, 2017), alleging it holds that *Hurst* is not retroactive to cases that were final before *Ring*.

precluding Defendant from the application of the constitutional rule. The State asserts this claim should be summarily denied.

The State alleges any *Hurst* error was harmless and a unanimous jury is not required to demonstrate harmless error. The State asserts Defendant was unanimously found guilty of first-degree murder during an armed robbery and there was no *Hurst* violation based on the contemporaneous conviction for armed robbery with a deadly weapon. However, the State acknowledges the Florida Supreme Court rejected that argument.⁴ The State argues a rational jury would have unanimously found the murder especially heinous, atrocious or cruel as the victim was stabbed multiple times, was kicked or stomped to death, and had defensive wounds. The State argues a rational jury would have made all the findings required by *Hurst* and imposed a death sentence and any alleged *Hurst* error did not contribute to Defendant's death sentence.

Claim 2: *Hurst* Eighth Amendment Violation. The State asserts Defendant is not entitled to relief under the Eighth Amendment based on *Hurst*. The State argues *Spaziano v. Florida*, 468 U.S. 447, 463–64 (1984) held that the Eighth Amendment is not violated when a judge has the ultimate responsibility of imposing death. The State argues the United States Supreme Court overruled *Spaziano* to the extent that a judge was previously allowed to find aggravating circumstances independent of a jury, but it did not address any possible Eighth Amendment violation or overrule *Spaziano* on Eighth Amendment grounds. The State asserts “[t]he United States Supreme Court has never held that a unanimous jury recommendation is required under the Eighth Amendment.”

The State alleges even though the Florida Supreme Court initially included the Eighth Amendment as a factor for requiring unanimous jury recommendations, the Court did not and cannot overrule United States Supreme Court precedent in *Spaziano*, and that the conformity

⁴ See *Franklin v. State*, ___ So. 3d ___, 2016 WL 6901498 at *6 (Fla. Nov. 23, 2016), and *Johnson v. State*, ___ So. 3d ___, 2016 WL 7013856 at *3 (Fla. Dec. 1, 2016).

clause in the Florida Constitution requires state courts to interpret Florida's prohibition on cruel and unusual punishments in conformity with United States Supreme Court jurisprudence. The State requests the Court summarily deny Defendant's Motion.

ANALYSIS AND RULING

On January 12, 2016, the United States Supreme Court declared Florida's capital sentencing scheme unconstitutional under *Ring* and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because a judge, rather than a jury, made the critical findings needed for the imposition of a death sentence. *Hurst v. Florida*, 136 S.Ct. 616 (2016). The Florida Legislature responded by enacting Chapter 2016-13, establishing a requirement for a jury recommendation of 10-2 in favor of death.

On October 14, 2016, the Florida Supreme Court declared that provision unconstitutional, finding that a unanimous jury recommendation of death is required, as well as unanimous findings of aggravators, that there are sufficient aggravating factors to justify a death sentence, and that the aggravating factors outweigh any mitigating circumstances. *Hurst*, 202 So. 3d at 57-58; *Perry*, 41 Fla. L. Weekly S449. The *Hurst* court also ruled that section 775.082(2), Florida Statutes, did not mandate an automatic commutation to life sentences because the death penalty itself was not declared unconstitutional. *Id.*

On December 22, 2016, the Florida Supreme Court issued *Asay*, holding that defendants whose cases became final before *Ring* are not entitled to retroactive application of *Hurst* stating "we conclude that *Hurst* should not be applied retroactively to *Asay's* case, in which the death sentence became final before the issuance of *Ring*." 41 Fla. L. Weekly S646.

The Florida Supreme Court in *Hurst* also found that unanimity in jury verdicts is required by the Eighth Amendment stating:

In addition to the requirements of unanimity that flow from the Sixth Amendment and from Florida's right to trial by jury, we conclude that juror unanimity in any

recommended verdict resulting in a death sentence is required under the Eighth Amendment. Although the United States Supreme Court has not ruled on whether unanimity is required in the jury's advisory verdict in capital cases, the foundational precept of the Eighth Amendment calls for unanimity in any death recommendation that results in a sentence of death.

Hurst, 202 So. 3d at 59. However, the Florida Supreme Court noted “*Hurst v. Florida* was decided on Sixth Amendment grounds and nothing in that decision suggests a broad indictment of the imposition of the death penalty generally.” *Id.* at 65.

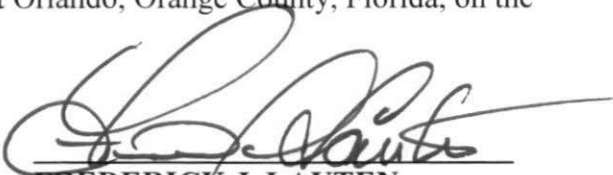
This Court is compelled to follow the Florida Supreme Court’s ruling in cases such as *Asay* and *Bogle*, 42 Fla. L. Weekly S166a (Feb. 9, 2017), which find that *Hurst* does not apply to death sentences that became final prior to the issuance of the United States Supreme Court’s opinion in *Ring* on June 24, 2002. Therefore, Defendant is not entitled to relief under any of his current claims, each of which depends on a retroactive application of the *Hurst* ruling because his judgment and sentence became final before *Ring*.

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

1. Defendant’s 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, at Orlando, Orange County, Florida, on the

28 day of March, 2017.


FREDERICK J. LAUTEN
Chief Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished by ~~U. S.~~^{E-} Mail or hand delivery to **Raheela Ahmed, Maria Perinetti and Reuben Neff, Attorneys for Defendant**, Assistant CCRC-M, Law Office of the Capital Collateral Regional Counsel, Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637 at ahmed@ccmr.state.fl.us, perinetti@ccmr.state.fl.us, neff@ccmr.state.fl.us and support@ccmr.state.fl.us; **Stephen D. Ake, Assistant Attorney General**, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-7013, capapp@myfloridalegal.com and stephen.ake@myfloridalegal.com; and **Kenneth Nunnelley, Assistant State Attorney**, 415 North Orange Avenue, Suite 300, Orlando, Florida 32801, knunnelley@sao9.org and PCF@sao9.org, on the 28th day of March, 2017.



Judicial Assistant



State of Florida, County of Orange

I hereby certify that the foregoing is a true and correct copy of the instrument filed in this office. Confidential or sealed items, if any, have been removed per Fla.R.Jud.Admin.2.420.

Witness my hand and official seal this 05/18/17. Tiffany M. Russell, Clerk of the Circuit Court

By: /s/ Christine Choong