

IN THE SUPREME COURT OF FLORIDA

WILLIAM ROGER DAVIS, III,

Appellant,

CASE NO: SC18-7

L.T. No.: 592009CF005140A000X

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA
ANSWER BRIEF OF THE APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL

CHRISTINA Z. PACHECO
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 71300
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
christina.pacheco@myfloridalegal.com
capapp@myfloridalegal.com

COUNSEL FOR APPELLEE

RECEIVED, 02/13/2018 02:08:29 PM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF THE ARGUMENT..... 4

ARGUMENT..... 5

THE FLORIDA RULE OF CRIMINAL PROCEDURE
3.851(i) DISMISSAL OF POSTCONVICTION
PROCEEDINGS TO BE REVIEWED BY THIS COURT..... 5

CERTIFICATE OF SERVICE..... 10

CERTIFICATE OF FONT COMPLIANCE..... 11

TABLE OF AUTHORITIES

Cases

Alston v. State,
894 So. 2d 46 (Fla. 2004) 5

Castro v. State,
744 So. 2d 986 (Fla. 1999) 5

Davis v. State,
148 So. 3d 1261 (Fla. 2014) 1, 7

Hurst v. State,
18 So. 3d 975 (Fla. 2009) passim

James v. State,
974 So. 2d 365 (Fla. 2008) 5, 9

Mosley v. State,
209 So. 3d 1248 (Fla. 2016) 6

Mullens v. State,
197 So. 3d 16 (Fla. 2016) 9

Sanchez-Velasco v. State,
702 So. 2d 224 (Fla. 1997) 5

Slawson v. State,
796 So. 2d 491 (Fla. 2001) 5

State of Florida v. Silvia,
No. SC17-337, 2018 WL 654715 (Fla. Feb. 1, 2018) 7, 8, 9

Trease v. State,
41 So. 3d 119 (Fla. 2010) 5, 7

Other Authorities

Fla. R. Crim. P. 3.851 (i) 8, 9

STATEMENT OF THE CASE AND FACTS

Appellant, William Roger Davis, was convicted of first-degree murder, kidnapping, and sexual battery, and he was sentenced to death. His convictions and death sentence were affirmed by this Court on direct appeal. *Davis v. State*, 148 So. 3d 1261 (Fla. 2014).

Davis, through counsel, subsequently filed a motion for postconviction relief, which was amended to include a claim pursuant to *Hurst v. State*, 18 So. 3d 975 (Fla. 2009). (PCR pp. 694-769). Davis, however, decided that he did not wish to pursue any of his postconviction claims, including his *Hurst* claim.

Davis had numerous conversations with his attorneys about his desire to waive his postconviction proceedings. (PCR p. 1378). Davis wrote a handwritten letter dated April 19, 2017, that was filed with the lower court, in which he affirmed his desire to waive his penalty-phase claims. (PCR p. 1305). "After a lot of reflection [and] conversations with family, I have decided that I would like to withdraw my entire pending rule 3.851 motion. Yes, the entire motion." (PCR p. 1305). He explained that one of his main reasons for doing so was because he believed he was where he was supposed to be. (PCR p. 1305). He did not want a life sentence, and he did not want to subject

the victim's family or his own family to a new trial. (PCR p. 1305).

The court appointed two independent experts to conduct competency evaluations of Davis. (PCR pp. 1289-1290, 1317-1320). Both experts found Davis competent, and the court subsequently found Davis competent to proceed. (PCR p. 1329). The court also held a separate hearing to address the voluntariness of Davis's waiver of his postconviction proceedings. (PCR pp. 1351-1393).

The judge engaged in a very detailed and comprehensive conversation with Davis to ensure that he understood the ramifications of his waiver and that it was his true intention to waive all his claims. (PCR pp. 1359-1360). Davis advised the court that he was firm and fixed in his decision to waive his postconviction proceedings.

Davis understood the *Hurst* decision and the impact that it had on his case. (PCR pp. 1363-65). Davis knew that given his 7-5 jury recommendation, he would be entitled to a new penalty phase where the State would be required to prove each aggravating factor, and the jury would have to be unanimous in finding any aggravating factor, unanimous in finding that the aggravating factors outweigh the mitigation, and unanimous in recommending death. (PCR pp. 1362-63). Davis understood that without those unanimous findings, he would be sentenced to life

in prison without the possibility of parole. (PCR p. 1365). Davis also understood that the jury could find that he should be sentenced to life in prison. (PCR p. 1365). The judge clarified, "knowing that your last jury made a finding of 7 to 5, recommendation for death? [...] So understand[...] if that was the same recommendation in the next jury, that it would be an automatic life sentence?" (PCR p. 1365). Davis replied, "Yes, sir." (PCR p. 1365).

Davis understood that by waiving his postconviction motion he would be waiving his entitlement to a new penalty phase under *Hurst*, and that waiver would be "for all time." (PCR pp. 1365-66). The judge confirmed, "Do you understand that it is permanent and that you cannot wake up tomorrow morning or the next year or ten minutes after I make a decision or five years from now or at any point in time in the future and say that you've changed your mind." (PCR p. 1367). Davis confirmed "Yes, sir." (PCR p. 1367).

Davis's attorneys stated that they had discussed his decision and the consequences of his decision with Davis numerous times in person, over the phone, and in writing. (PCR p. 1378). His attorneys also indicated that they had no concerns regarding his competency. (PCR pp. 1378-80). Davis confirmed that his discussion with his attorneys were to his satisfaction.

(PCR p. 1361). He had considered the advice of his lawyers before making his decision. (PCR p. 1377). No one forced him, threatened him, or offered or promised him anything to get him to waive his postconviction motion. (PCR p. 1376). Davis felt fully alert during the hearing and understood everything that was happening. (PCR p. 1376).

Following the hearing, the postconviction court entered a written order finding that Davis knowingly, freely, and voluntarily made the decision to dismiss his rule 3.851 motion and to terminate his postconviction proceedings. (PCR p. 1401). The court found it was appropriate to grant Davis's request given his clear desire to dismiss his pending motions and to terminate the proceedings. (PCR p. 1402).

This appeal follows.

SUMMARY OF THE ARGUMENT

The lower court's dismissal of Davis's postconviction proceedings was based on Davis knowingly, intelligently, and voluntarily dismissing his pending postconviction motion and waiving his right to the postconviction claims, including any relief pursuant to *Hurst v. State*, 18 So. 3d 975 (Fla. 2009). Davis, however, did not seek to discharge his collateral counsel, and the lower court permitted Davis to continue to be represented by counsel.

ARGUMENT

**THE FLORIDA RULE OF CRIMINAL PROCEDURE 3.851(i)
DISMISSAL OF POSTCONVICTION PROCEEDINGS TO BE REVIEWED
BY THIS COURT.**

This case involves an appeal following Davis's waiver of his postconviction proceedings. This Court has consistently held that the right to prosecute postconviction claims may be waived so long as the waiver is voluntary, knowing, and intelligent. See *James v. State*, 974 So. 2d 365 (Fla. 2008); *Alston v. State*, 894 So. 2d 46 (Fla. 2004); *Slawson v. State*, 796 So. 2d 491 (Fla. 2001); *Castro v. State*, 744 So. 2d 986 (Fla. 1999); *Sanchez-Velasco v. State*, 702 So. 2d 224 (Fla. 1997). This Court reviews a lower court's order dismissing postconviction proceedings for an abuse of discretion. *Trese v. State*, 41 So. 3d 119, 124 (Fla. 2010).

Here, the lower court properly ensured that Davis voluntarily, knowingly, and intelligently waived his postconviction proceedings before dismissing the pending motion for postconviction relief. While there was no concern about Davis's competency, the lower court appointed two experts to examine Davis and to conduct competency evaluations. Both experts found Davis competent. (PCR p. 1329). The court also held another hearing to ensure that Davis truly sought to dismiss all his postconviction claims and that he fully understood the ramifications of doing so.

The court engaged in a lengthy and comprehensive colloquy with Davis, which confirmed that Davis understood the postconviction process and all the rights he was waiving. (PCR pp. 1351-1393). He was knowledgeable of the ruling in *Hurst v. State*, 18 So. 3d 975 (Fla. 2009), and the fact that he would be entitled to a new penalty phase. (PCR pp. 1363-65). Davis was fully informed of all the consequences of his decision. He had numerous conversations with his attorneys about the waiver, and he did not need any additional time to speak with his attorneys or to contemplate his decision. (PCR pp. 1361, 1378).

Davis was "firm in [his] decision," and it was made of his own accord without promises, threats, or coercion from anyone else. (PCR pp. 1361, 1376). Davis had indicated in a letter that he felt he was where he should be, and he did not want a life sentence or a new trial. (PCR p. 1305).

This Court's rulings in *Hurst v. State*, 18 So. 3d 975 (Fla. 2009), and *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016), do not have any impact on Davis's knowing, voluntary, and intelligent waiver. Davis waived his postconviction motion with full knowledge of the *Hurst* decision and understanding that he would be entitled to a new penalty-phase proceeding. In addition to being deemed competent by experts, Davis's IQ score was just three points below the genius level when he underwent IQ testing

prior to his penalty-phase proceedings. *Davis*, 148 So. 3d at 1267.

This Court has acknowledged that "it cannot deny [a death row inmate] his right to control his destiny to whatever extent remains." *Trease v. State*, 41 So. 3d 119, 123 (Fla. 2010) (quoting *Durocher v. Singletary*, 623 So. 2d 482, 484 (Fla. 1993)). A capital defendant like Davis should not be forced to pursue collateral proceedings merely because he would be entitled to a form of relief that he does not want in the first place. Doing so would serve no benefit to Davis, and it would waste state and judicial resources while causing undue stress to the victim's family.

While it does not appear that there has been another case involving a waiver of postconviction proceedings since this Court's *Hurst* decision, other defendants have successfully waived postconviction proceedings prior to *Hurst*, and this Court has held that the waiver precluded any subsequent *Hurst* relief. In *State of Florida v. Silvia*, No. SC17-337, 2018 WL 654715, *1 (Fla. Feb. 1, 2018), Silvia had initially waived his right to postconviction proceedings and counsel, but he subsequently filed a successive motion seeking *Hurst* relief. The postconviction granted Silvia a new penalty phase, finding that Silvia was merely seeking to avail himself to a newly

established constitutional right he did not possess at the time of the waiver, and therefore, could not have knowingly and voluntarily waived. *Id.* This Court disagreed and reversed the order granting a new penalty phase, finding that Silvia had no basis to claim *Hurst* relief after he validly waived his postconviction proceedings. *Id.* at *2.

In this case, Davis was aware of all the implications of the *Hurst* ruling and he fully understood the consequences of dismissing the postconviction motion filed on his behalf. Davis made it very clear that he did not want a new trial or penalty phase, and he did not want a life sentence. The trial court complied with the standards applicable to a waiver of postconviction proceedings. Accordingly, the trial court did not abuse its discretion in dismissing Davis's postconviction proceedings.

However, Appellee notes that Davis's counsel requested to remain on Davis's case as appointed counsel for purposes of any future litigation arising from a warrant being signed for his execution. (PCR p. 1369). The discharge of collateral counsel appears to be the routine procedure under rule 3.851 (i), of the Florida Rules of Criminal Procedure, when postconviction proceedings are dismissed. The rule expressly states that it applies "only when a prisoner seeks both to dismiss pending

postconviction proceedings and to discharge collateral counsel.”
§ 3.851 (i) Fla. R. Crim. P.

In Davis’s initial brief, the stated reason for continued representation lists “successive state or federal proceedings.” Initial Brief at 13. It is Appellee’s position that by dismissing his postconviction motion and waiving his right to postconviction relief, Davis has waived his right to subsequent successive state proceedings. See *James v. State*, 974 So. 2d 365 (Fla. 2008) (addressing the finality of a waiver of postconviction claims); see also *State of Florida v. Silvia*, No. SC17-337, 2018 WL 654715 (Fla. Feb. 1, 2018) (where the defendant’s waiver of his postconviction proceedings precluded him from seeking *Hurst* relief). As this Court has explained, a defendant cannot subvert a right by waiving it and then suggest that a subsequent development in the law has fundamentally undermined his sentence. *Mullens v. State*, 197 So. 3d 16 (Fla. 2016).

CONCLUSION

Based on the foregoing, the State believes that the lower court’s order dismissing the proceedings should be affirmed based on Davis’s knowing, intelligent, and voluntary waiver; however, should this Court find that Davis’s decision not to discharge his counsel could have impacted the waiver of his

postconviction proceedings, further clarification and/or colloquy may be required.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Christina Z. Pacheco
CHRISTINA Z. PACHECO
Assistant Attorney General
Florida Bar No. 71300
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
christina.pacheco@myfloridalegal.com
capapp@myfloridalegal.com
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2018, I 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: Raheela Ahmed, Esquire, Maria Christine Perinetti, Esquire, and Lisa Marie Bort, Esquire, Office of Capital Collateral Regional-Counsel Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **ahmed@ccmr.state.fl.us**, and **perinetti@ccmr.state.fl.us**, **bort@ccmr.state.fl.us**, and **support@ccmr.state.fl.us**.

/s/ Christina Z. Pacheco
COUNSEL FOR APPELLEE

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Christina Z. Pacheco
COUNSEL FOR APPELLEE