

Supreme Court of Florida

No. SC17-839

MARK A. TWILEGAR,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[November 2, 2017]

PER CURIAM.

Mark A. Twilegar, a prisoner under sentence of death, appeals the circuit court's order denying his successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851 seeking relief from his death sentence pursuant to Hurst v. Florida, 136 S. Ct. 616 (2016), and Hurst v. State, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.

As the circuit court correctly recognized, the Hurst decisions do not apply to defendants like Twilegar who waived a penalty phase jury. See Mullens v. State, 197 So. 3d 16, 38-40 (Fla. 2016), cert. denied, 137 S. Ct. 672 (2017); see also

Brant v. State, 197 So. 3d 1051, 1079 (Fla. 2016). Although Twilegar urges this Court to revisit, in light of the Hurst decisions, its prior holding in Twilegar’s direct appeal that his waiver was knowing, intelligent, and voluntary, see Twilegar v. State, 42 So. 3d 177, 204 (Fla. 2010), cert. denied, 562 U.S. 1225 (2011), that argument is without merit. See Mullens, 197 So. 3d at 39-40 (explaining that a defendant “cannot subvert the right to jury factfinding by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence”). Accordingly, we affirm the circuit court’s denial.

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON,
and LAWSON, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Lee County,
Ramiro Mañalich, Judge - Case No. 362003CF002151000ACH

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