

# Supreme Court of Florida

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No. SC17-850

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**KAYLE BARRINGTON BATES,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

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No. SC17-1224

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**KAYLE BARRINGTON BATES,**  
Petitioner,

vs.

**JULIE L. JONES, etc.,**  
Respondent.

[January 22, 2018]

PER CURIAM.

Kayle Barrington Bates appeals the circuit court's order denying his motion filed pursuant to Florida Rule of Criminal Procedure 3.851 and petitions this Court

for a writ of habeas corpus. We have jurisdiction. See art. V, § 3(b)(1), (9), Fla. Const.

Bates seeks relief pursuant to the United States Supreme Court's decision in Hurst v. Florida, 136 S. Ct. 616 (2016), and our decision on remand in Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). This Court stayed Bates' appeal and consideration of his habeas petition pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017). After this Court decided Hitchcock, Bates responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in both cases.

After reviewing Bates' response to the order to show cause, as well as the State's arguments in reply, we conclude that Bates is not entitled to relief. Bates was sentenced to death following a jury's recommendation for death by a vote of nine to three. Bates v. State, 750 So. 2d 6, 9 (Fla. 1999). Bates' sentence of death became final in 2000. Bates v. Florida, 531 U.S. 835 (2000). Thus, Hurst does not apply retroactively to Bates' sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Bates' motion and deny his petition for a writ of habeas corpus.

The Court having carefully considered all arguments raised by Bates, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.  
PARIENTE, J., concurs in result with an opinion.  
LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

An Appeal from the Circuit Court in and for Bay County,  
Harry Hentz McClellan, Judge - Case No. 031982CF000661XXAXMX  
And an Original Proceeding – Habeas Corpus

Sarah S. Butters of Ausley McMullen, Tallahassee, Florida, and Neal Dupree, Capital Collateral Regional Counsel, Scott Gavin, and Rachel Day, Assistant Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida,

for Appellant/Petitioner

Pamela Jo Bondi, Attorney General, and Charmaine M. Millsaps, Assistant Attorney General, Tallahassee, Florida,

for Appellee/Respondent