

Supreme Court of Florida

No. SC17-726

DANIEL BURNS, JR.,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 23, 2018]

PER CURIAM.

We have for review Daniel Burns, Jr.'s appeal of the circuit court's order denying Burns' motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Burns' motion sought 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 Burns' appeal 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, Burns responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Burns' response to the order to show cause, as well as the State's arguments in reply, we conclude that Burns is not entitled to relief. Burns was sentenced to death following a jury's unanimous recommendation for death. Burns v. State, 699 So. 2d 646, 652 (Fla. 1997). Burns' sentence of death became final in 1998. Burns v. Florida, 522 U.S. 1121 (1998). Thus, Hurst does not apply retroactively to Burns' sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Burns' motion.

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

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

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 Manatee County,
Diana Lee Moreland, Judge - Case No. 411987CF002014CFAXMA

James Vigianno, Capital Collateral Regional Counsel, Mark S. Gruber, and Julie
A. Morley, Assistant Capital Collateral Regional Counsel, Temple Terrace,
Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Lisa Martin, Assistant Attorney General,
Tampa, Florida,

for Appellee