

# Supreme Court of Florida

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No. SC17-1733

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**MILFORD WADE BYRD,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[February 28, 2018]

PER CURIAM.

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

Byrd's 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). After this Court decided *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S. Ct. 513 (2017), Byrd responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Byrd's response to the order to show cause, as well as the State's arguments in reply, we conclude that Byrd is not entitled to relief. Byrd was sentenced to death following a jury's recommendation for death. *Byrd v. State*, 481 So. 2d 468, 471 (Fla. 1985).<sup>1</sup> Byrd's sentence of death became final in 1986. *Byrd v. Florida*, 476 U.S. 1153 (1986). Thus, *Hurst* does not apply retroactively to Byrd's sentence of death. See *Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Byrd's motion.

The Court having carefully considered all arguments raised by Byrd, 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*.

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1. The jury's vote to recommend death is unknown. This Court's opinion on direct appeal merely states that "[t]he jury returned an advisory recommendation of the death penalty." *Byrd*, 481 So. 2d at 471.

An Appeal from the Circuit Court in and for Hillsborough County,  
Michelle Sisco, Judge - Case No. 291981CF010517000AHC

Neal Dupree, Capital Collateral Regional Counsel, Bryan E. Martinez, Staff  
Attorney, and Martin J. McClain, Special Assistant Capital Collateral Regional  
Counsel, Southern Region, Fort Lauderdale, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Marilyn Muir  
Beccue, Assistant Attorney General, Tampa, Florida,

for Appellee