

Supreme Court of Florida

No. SC17-847

DONALD DAVID DILLBECK,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 24, 2018]

PER CURIAM.

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

Dillbeck'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). This Court stayed Dillbeck's 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, Dillbeck responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Dillbeck's response to the order to show cause, as well as the State's arguments in reply, we conclude that Dillbeck is not entitled to relief. Dillbeck was sentenced to death following a jury's recommendation for death by a vote of eight to four. Dillbeck v. State, 643 So. 2d 1027, 1028 (Fla. 1994). Dillbeck's sentence of death became final in 1995. Dillbeck v. Florida, 514 U.S. 1022 (1995). Thus, Hurst does not apply retroactively to Dillbeck's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Dillbeck's motion.

The Court having carefully considered all arguments raised by Dillbeck, 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 Leon County,
Angela Cote Dempsey, Judge - Case No. 371990CF002795AXXXXX

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for Appellant

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