

Supreme Court of Florida

No. SC17-1499

RICARDO GONZALEZ,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[March 23, 2018]

PER CURIAM.

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

Gonzalez’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 Gonzalez’s appeal pending the disposition of *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S. Ct. 513 (2017).

After this Court decided *Hitchcock*, Gonzalez responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Gonzalez's response to the order to show cause, as well as the State's arguments in reply, we conclude that Gonzalez is not entitled to relief. Gonzalez was sentenced to death following a jury's recommendation for death by a vote of eight to four, and his sentence of death became final in 2001.¹ *Gonzalez v. State*, 786 So. 2d 559, 563 (Fla. 2001). Thus, *Hurst* does not apply retroactively to Gonzalez's sentence of death. *See Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Gonzalez's motion.

The Court having carefully considered all arguments raised by Gonzalez, 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

1. Although our decision affirming Gonzalez's death sentence does not specify the number of Gonzalez's jurors who voted to recommend death, our decision affirming the denial of his initial motion for postconviction relief does. *See Gonzalez v. State*, 990 So. 2d 1017, 1022 (Fla. 2008).

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 Miami-Dade County,
Ellen Sue Venzer, Judge - Case No. 131992CF002141D000XX

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