

# Supreme Court of Florida

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No. SC17-899

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**KENNETH HARTLEY,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[January 26, 2018]

PER CURIAM.

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

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

After reviewing Hartley's response to the order to show cause, as well as the State's arguments in reply, we conclude that Hartley is not entitled to relief.

Hartley was sentenced to death following a jury's recommendation for death by a vote of nine to three. Hartley v. State, 686 So. 2d 1316, 1319 (Fla. 1996).

Hartley's sentence of death became final in 1997. Hartley v. Florida, 522 U.S. 825 (1997). Thus, Hurst does not apply retroactively to Hartley's sentence of death.

See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Hartley's motion.

The Court having carefully considered all arguments raised by Hartley, 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 Duval County,  
Russell L. Healey, Judge - Case No. 161991CF008144AXXXMA

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