

Supreme Court of Florida

No. SC17-1211

DAVID MILLER, JR.,
Petitioner,

vs.

JULIE L. JONES, etc.,
Respondent.

[January 31, 2018]

PER CURIAM.

David Miller, Jr., petitions this Court for a writ of habeas corpus seeking 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 has jurisdiction. See art. V, § 3(b)(9), Fla. Const.

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

After reviewing Miller's response to the order to show cause, as well as the State's arguments in reply, we conclude that Miller is not entitled to relief. Miller was sentenced to death following a jury's recommendation for death by a vote of seven to five, and Miller's sentence of death became final in 2001. Miller v. State, 770 So. 2d 1144, 1146 (Fla. 2000). Thus, Hurst does not apply retroactively to Miller's sentence. See Hitchcock, 226 So. 3d at 217. Accordingly, we deny Miller's petition.

The Court having carefully considered all arguments raised by Miller, 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 Original Proceeding – Habeas Corpus, Duval County,
Case No. 161997CF006680AXXXMA

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