

Supreme Court of Florida

No. SC17-1435

THOMAS M. OVERTON,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[February 2, 2018]

PER CURIAM.

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

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

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

After a jury convicted Overton of two counts of first degree murder, he was sentenced to death on both counts following a jury's recommendation for death by a vote of nine to three on one count and a vote of eight to four on another count.

Overton v. State, 801 So. 2d 877, 888-89 (Fla. 2001). Overton's sentences of death became final in 2002. Overton v. Florida, 535 U.S. 1062 (2002). Thus, Hurst does not apply retroactively to Overton's sentences of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Overton's motion.

The Court having carefully considered all arguments raised by Overton, 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 Monroe County,
Mark H. Jones, Chief Judge - Case No. 441996CF030167000APK

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