

Supreme Court of Florida

No. SC17-984

HARRY FRANKLIN PHILLIPS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 22, 2018]

PER CURIAM.

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

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

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

Phillips was sentenced to death following a jury's recommendation for death by a vote of seven to five. Phillips v. State, 705 So. 2d 1320, 1321 (Fla. 1997).

Phillips' sentence of death became final in 1998. Phillips v. Florida, 525 U.S. 880 (1998). Thus, Hurst does not apply retroactively to Phillips' sentence of death.

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

The Court having carefully considered all arguments raised by Phillips, 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 Dade County,
Nushin G. Sayfie, Judge - Case No. 131983CF0004350001XX

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