

Supreme Court of Florida

No. SC17-1812

THOMAS DEWEY POPE,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[February 28, 2018]

PER CURIAM.

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

Pope'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). After this Court decided *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S. Ct. 513 (2017), Pope responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Pope's response to the order to show cause, as well as the State's arguments in reply, we conclude that Pope is not entitled to relief. Pope was sentenced to death following a jury's recommendation for death by a vote of nine to three, and his sentence of death became final in 1984. *Pope v. State*, 441 So. 2d 1073, 1075 (Fla. 1983); *Pope v. Sec'y for Dep't of Corrs.*, 680 F.3d 1271, 1278 (11th Cir. 2012). Thus, *Hurst* does not apply retroactively to Pope's sentence of death. *See Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Pope's motion.

The Court having carefully considered all arguments raised by Pope, 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 Broward County,
Michael I. Rothschild, Judge - Case No. 061981CF003047A88810

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