

Supreme Court of Florida

MONDAY, DECEMBER 09, 2013

CASE NO.: SC12-1948
Lower Tribunal No(s): 1981-01957-
CFAES

TED HERRING

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

Ted Herring, a prisoner under sentence of death, appeals the circuit court's order, which summarily denied his successive motion for postconviction relief, denied his request for the appointment of experts, and reaffirmed his death sentence. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. We previously affirmed Herring's conviction and death sentence on direct appeal, Herring v. State, 446 So. 2d 1049 (Fla. 1984), although we later struck down the application of the cold, calculated, and premeditated aggravator, Rogers v. State, 511 So. 2d 526 (Fla. 1987). We also affirmed the denial of Herring's initial motion for postconviction relief, Herring v. State, 501 So. 2d 1279 (Fla. 1987), denied a petition for a writ of habeas corpus, Herring v. Dugger, 528 So. 2d 1176 (Fla. 1988), affirmed the denial of a subsequent motion for postconviction relief, Herring v. State, 730 So. 2d 1264 (Fla. 1998), and denied another petition for writ of habeas corpus, Herring v. Crosby, 862 So. 2d 727 (Fla. 2003).


Most recently, in State v. Herring, 76 So. 3d 891 (Fla. 2011), cert. denied, 133 S. Ct. 28 (2012), we held that the trial court "erred as a matter of law in finding that Herring met the definition of mental retardation under Florida law." Id. at 897. Accordingly, we reversed the circuit court's order vacating Herring's death sentence. Id. Herring's four IQ tests—which included the Wechsler Adult Intelligence Scale-Third Edition in 2004, yielding a full scale IQ score of 74—did not result in a full scale IQ score of 70 or below. Id. at 893 n.4.

Herring argues on appeal that he is entitled to an evidentiary hearing on his claim of newly discovered evidence based on the release of the Wechsler Adult Intelligence Scale-Fourth Edition. We disagree. See Cherry v. State, 114 So. 3d 932, 932 (Fla. 2013). Accordingly, we affirm the circuit court's order.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



tw
Served:

ALAN S. GOUDISS
LEON H. HANDLEY
JON M. WILSON
JOHN RICHARD HAMILTON
ADAM S. HAKKI
KENNETH SLOAN NUNNELLEY
HON. DIANE M. MATOUSEK, CLERK
HON. JOSEPH DAVID WALSH, JUDGE
ROSEMARY CALHOUN