

SUPREME COURT OF NEBRASKA

State v. Hessler

305 Neb. 451 (2020) · No. No. S-19-652 · Decided April 3, 2020

SUMMARY

The Nebraska Supreme Court affirmed the denial of Jeffrey Hessler’s successive motion for postconviction relief without an evidentiary hearing. The court held that *Hurst v. Florida* did not announce a new rule of law and therefore could not trigger the one-year limitations period under Nebraska’s Postconviction Act. The court further explained that, even if timely, Hessler’s constitutional claims lacked merit under *McKinney v. Arizona*.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	April 3, 2020
DOCKET	No. S-19-652
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jeffrey Hessler appealed the denial of a successive motion for postconviction relief, which the district court dismissed as time barred without an evidentiary hearing.
STANDARD OF REVIEW	The court reviews de novo whether a postconviction applicant alleged sufficient facts to demonstrate a constitutional violation or whether the record and files affirmatively show that the applicant is entitled to no relief. Whether a postconviction claim is procedurally barred is a question of law reviewed independently of the lower court’s ruling.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Jeffrey Hessler v. State of Nebraska

TOPICS

state post-conviction relief successive petitions sentencing sixth amendment
cruel and unusual punishment

PRACTICE AREAS

state post-conviction relief

criminal procedure

capital sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether *Hurst v. Florida* constituted a newly recognized constitutional right that triggered Nebraska's one-year postconviction limitations period under Neb. Rev. Stat. § 29-3001(4)(d).
2. Whether Hessler's successive postconviction claims were time barred.
3. Whether Nebraska's capital sentencing scheme violated the Sixth, Eighth, or Fourteenth Amendments under *Hurst* and related precedent.
4. Whether the district court properly denied postconviction relief without an evidentiary hearing.

HOLDINGS

1. *Hurst* did not announce a new rule of law and therefore could not trigger the one-year statute of limitations under Neb. Rev. Stat. § 29-3001(4)(d).
2. Hessler's postconviction claims were time barred because the only triggering event on which he relied, *Hurst*, did not qualify under § 29-3001(4)(d).
3. Even if Hessler's claims were not time barred, they would not entitle him to postconviction relief because the Sixth Amendment does not require a jury to weigh aggravating and mitigating circumstances or make the ultimate capital sentencing decision within the permissible sentencing range.

KEY QUOTATIONS

“Hurst did not announce a new rule of law, and thus it cannot trigger the 1-year statute of limitations under § 29-3001(4)(d).” (at 455)

“Under Ring and Hurst, a jury must find the aggravating circumstance that makes the defendant death eligible. But importantly, in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range.” (at 456)

FACTUAL BACKGROUND

In 2004, a jury convicted Jeffrey Hessler of first degree murder, kidnapping, first degree sexual assault, and use of a firearm to commit a felony, and he received a death sentence for murder. After unsuccessful direct and postconviction challenges, Hessler filed a successive motion approximately ten months after the United States Supreme Court decided *Hurst v. Florida*. He argued that *Hurst* constituted a new triggering event under Nebraska's one-year postconviction limitations period and that Nebraska's capital sentencing statutes violated the Sixth, Eighth, and Fourteenth Amendments.

PROCEDURAL HISTORY

Hessler was convicted and sentenced to death in 2004 and unsuccessfully pursued a direct appeal and two prior postconviction proceedings. He filed a successive postconviction motion in 2016 based on *Hurst v. Florida*,

asserting that Nebraska's capital sentencing statutes violated the Sixth, Eighth, and Fourteenth Amendments. The district court, relying on *State v. Lotter*, concluded that the motion was untimely and denied relief without an evidentiary hearing. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016)
- *State v. Lotter*, 301 Neb. 125, 917 N.W.2d 850 (2018)
- *State v. Hessler*, 274 Neb. 478, 741 N.W.2d 406 (2007)
- *State v. Hessler*, 282 Neb. 935, 807 N.W.2d 504 (2011)
- *State v. Hessler*, 288 Neb. 670, 850 N.W.2d 777 (2014)
- *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- *Schiro v. Summerlin*, 542 U.S. 348, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004)
- *State v. Mata*, 304 Neb. 326, 934 N.W.2d 475 (2019)
- *Lotter v. Nebraska*, 139 S. Ct. 2716, 204 L. Ed. 2d 1114 (2019)
- *McKinney v. Arizona*, 140 S. Ct. 702 (2020)