

SUPREME COURT OF FLORIDA

Marbel Mendoza v. State of Florida

235 So. 3d 302 (Fla. 2018) · No. SC17-1324 · Decided January 30, 2018

SUMMARY

The Supreme Court of Florida affirmed the denial of Marbel Mendoza’s motion for post-conviction relief under Florida Rule of Criminal Procedure 3.851. The court held that *Hurst v. Florida* did not apply retroactively to Mendoza’s death sentence, which became final in 1998, consistent with *Hitchcock v. State*.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Labarga, C.J.; Quince, J.; Polston, J.; Lawson, J.; Pariente, J.; Lewis, J.; Canady, J.
JURISDICTION	Florida
DECIDED	January 30, 2018
DOCKET	SC17-1324
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the circuit court denying Mendoza's motion for post-conviction relief under Florida Rule of Criminal Procedure 3.851.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion
PARTIES	Marbel Mendoza v. State of Florida

TOPICS

- state post-conviction relief
- post-conviction relief
- sentencing
- appellate procedure
- criminal procedure

PRACTICE AREAS

- Criminal law
- Capital post-conviction relief
- Appellate procedure

QUESTIONS PRESENTED

1. Whether *Hurst v. Florida* applies retroactively to Mendoza's death sentence, which became final in 1998.

2. Whether Mendoza was entitled to post-conviction relief under Florida Rule of Criminal Procedure 3.851.

HOLDINGS

1. Hurst does not apply retroactively to Mendoza's death sentence because the sentence became final in 1998.
2. Mendoza was not entitled to relief, and the denial of her Rule 3.851 motion was affirmed.

FACTUAL BACKGROUND

Mendoza was sentenced to death following a jury's recommendation for death by a vote of seven to five. Her death sentence became final in 1998. She later filed a Rule 3.851 motion seeking relief based on the United States Supreme Court's decision in *Hurst v. Florida* and the Florida Supreme Court's decision on remand in *Hurst v. State*.

PROCEDURAL HISTORY

Mendoza was sentenced to death after a jury recommended death by a seven-to-five vote, and the sentence became final in 1998. She later sought relief under *Hurst v. Florida* and *Hurst v. State* through a Rule 3.851 motion. The Florida Supreme Court stayed the appeal pending *Hitchcock v. State*, then affirmed the circuit court's denial after concluding that *Hitchcock* controlled and *Hurst* did not apply retroactively.

DISPOSITION

affirmed

CASES CITED

- *Hurst v. Florida*, 136 S. Ct. 616 (2016)
- *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017)
- *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017)
- *Mendoza v. State*, 700 So. 2d 670, 673 (Fla. 1997)
- *Mendoza v. Florida*, 525 U.S. 839 (1998)

OPINION

Marbel Mendoza v. State of Florida

235 So. 3d 302

PER CURIAM.

Supreme Court of Florida _____ No. SC17-1324 _____

MARBEL MENDOZA,

Appellant, vs.

STATE OF FLORIDA,

Appellee. [January 30, 2018] PER CURIAM. We have for review Marbel Mendoza's appeal of the circuit court's order denying Mendoza's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const. Mendoza'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 Mendoza'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*, Mendoza responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case. After reviewing Mendoza's response to the order to show cause, as well as the State's arguments in reply, we conclude that Mendoza is not entitled to relief. Mendoza was sentenced to death following a jury's recommendation for death by a vote of seven to five. *Mendoza v. State*, 700 So. 2d 670, 673 (Fla. 1997). Mendoza's sentence of death became final in 1998. *Mendoza v. Florida*, 525 U.S. 839 (1998). Thus, *Hurst* does not apply retroactively to Mendoza's sentence of death. See *Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Mendoza's motion. The Court having carefully considered all arguments raised by Mendoza, 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*. -2- An Appeal from the Circuit Court in and for Dade County, Dava J. Tunis, Judge - Case No. 131992CF009940C000XX Neal Dupree, Capital Collateral Regional Counsel, Bryan E. Martinez, Staff Attorney, and Rachel L. Day, Assistant Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida, for Appellant Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Melissa J. Roca, Assistant Attorney General, Miami, Florida, for Appellee -3- PER CURIAM.

PER CURIAM. We have for review Marbel Mendoza's appeal of the circuit court's order denying Mendoza's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const. Mendoza's motion sought relief pursuant to the United States Supreme Court's decision in *Hurst v. Florida*, — U.S.—, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and our decision on remand in *Hurst v. State* (Hurst), 202 So.3d 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017). This Court stayed Mendoza's appeal pending the disposition of *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017), cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017). After this Court decided *Hitchcock*, Mendoza responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive.in this case. After reviewing Mendoza's response to the order to show cause, as well as the State's arguments in reply, we conclude that Mendoza is not entitled to relief. Mendoza was sentenced to death

following a jury's recommendation for death by a vote of seven to five. *Mendoza v. State*, 700 So.2d 670, 673 (Fla. 1997). Mendoza's sentence of death became final in 1998. *Mendoza v. Florida*, 525 U.S. 839, 119 S.Ct. 101, 142 L.Ed.2d 81 (1998). Thus, *Hurst* does not apply retroactively to Mendoza's sentence of death. See *Hitchcock*, 226 So.3d at 217. Accordingly, we affirm the denial of Mendoza's motion. The Court having carefully considered all arguments raised by Mendoza, 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.