

SUPREME COURT OF FLORIDA

Marbel Mendoza v. State of Florida

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

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-

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