

SUPREME COURT OF FLORIDA

Richard Harold Anderson v. State of Florida

235 So. 3d 277 (Fla. 2018) · No. SC17-884 · Decided January 26, 2018

SUMMARY

The Supreme Court of Florida affirmed the denial of Richard Harold Anderson’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 Anderson’s death sentence, which became final in 1991, relying on *Hitchcock v. State*.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Labarga, C.J.; Polston, J.; Lawson, J.; Pariente, J.; Lewis, J.; Canady, J.
JURISDICTION	Florida
DECIDED	January 26, 2018
DOCKET	SC17-884
DISPOSITION	affirmed
PROCEDURAL POSTURE	Anderson appealed the circuit court's denial of his motion for post-conviction relief under Florida Rule of Criminal Procedure 3.851, seeking relief based on <i>Hurst v. Florida</i> and <i>Hurst v. State</i> .
STANDARD OF REVIEW	De novo review of the legal issue concerning the retroactive application of <i>Hurst</i> to a final death sentence.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding on Florida courts concerning the disposition of Anderson's <i>Hurst</i> -based retroactivity claim.
PARTIES	Richard Harold Anderson v. State of Florida

TOPICS

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

PRACTICE AREAS

- criminal procedure
- capital post-conviction relief
- death penalty

QUESTIONS PRESENTED

1. Whether *Hurst v. Florida* and *Hurst v. State* apply retroactively to Anderson's death sentence, which became final in 1991.
2. Whether the circuit court properly denied Anderson's Rule 3.851 motion for post-conviction relief.

HOLDINGS

1. Hurst does not apply retroactively to Anderson's death sentence because the sentence became final in 1991.
2. The circuit court correctly denied Anderson's motion for post-conviction relief.

KEY QUOTATIONS

“Thus, *Hurst* does not apply retroactively to Anderson’s sentence of death.” (235 So. 3d at 277)

“Accordingly, we affirm the denial of Anderson’s motion.” (235 So. 3d at 277)

FACTUAL BACKGROUND

Anderson was sentenced to death following a jury's recommendation for death by a vote of eleven to one. His death sentence became final in 1991. He sought post-conviction relief under Rule 3.851 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

Anderson was sentenced to death after a jury recommended death by an eleven-to-one vote, and his sentence became final in 1991. He later filed a Rule 3.851 motion based on *Hurst*. The Florida Supreme Court stayed the appeal pending *Hitchcock v. State*, required briefing on whether *Hitchcock* was dispositive, and then affirmed the denial of relief.

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, 217 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017)
- *Anderson v. State*, 574 So. 2d 87, 90 (Fla. 1991)
- *Anderson v. Florida*, 502 U.S. 834 (1991)

OPINION

PER CURIAM.

Supreme Court of Florida _____ No. SC17-884 _____ RICHARD HAROLD ANDERSON, Appellant, vs. STATE OF FLORIDA, Appellee. [January 26, 2018] PER CURIAM. We have for review Richard Harold Anderson's appeal of the circuit court's order denying Anderson's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Anderson'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 Anderson'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*, Anderson responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case. After reviewing Anderson's response to the order to show cause, as well as the State's arguments in reply, we conclude that Anderson is not entitled to relief. Anderson was sentenced to death following a jury's recommendation for death by a vote of eleven to one.

Anderson v. State, 574 So. 2d 87, 90 (Fla. 1991). Anderson's sentence of death became final in 1991. *Anderson v. Florida*, 502 U.S. 834 (1991). Thus, *Hurst* does not apply retroactively to Anderson's sentence of death. See *Hitchcock*, 226 So. 3d at 217.

Accordingly, we affirm the denial of Anderson's motion. The Court having carefully considered all arguments raised by Anderson, we caution that any rehearing motion containing reargument will be stricken. It is so ordered. LABARGA, C.J., and POLSTON, and LAWSON, JJ., concur. PARIENTE, J., concurs in result with an opinion. LEWIS and CANADY, JJ., concur in result.

QUINCE, J., recused. 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 Hillsborough County, Michelle Sisco, Judge - Case No. 291987CF008047000AHC James Viggiano, Jr., Capital Collateral Regional Counsel, Maria E. DeLiberato, Julissa Fontán, and Chelsea Ray Shirley, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida, for Appellant Pamela Jo Bondi, Attorney General, and Christina Z. Pacheco, Assistant Attorney General, Tampa, Florida, for Appellee -3-
PER CURIAM.

PER CURIAM. We have for review Richard Harold Anderson's appeal of the circuit court's order denying Anderson's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court

has jurisdiction. See art. V, § 3(b)(1), Fla. Const. Anderson'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 Anderson'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*, Anderson responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case. After reviewing Anderson's response to the order to show cause, as well as the State's arguments in reply, we conclude that Anderson is not entitled to relief. Anderson was sentenced to death following a jury's recommendation for death by a vote of eleven to one.

Anderson v. State, 574 So.2d 87, 90 (Fla. 1991). Anderson's sentence of death became final in 1991. *Anderson v. Florida*, 502 U.S. 834, 112 S.Ct. 114, 116 L.Ed.2d 83 (1991). Thus, *Hurst* does not apply retroactively to Anderson's sentence of death. See *Hitchcock*, 226 So.3d at 217.

Accordingly, we affirm the denial of Anderson's motion. The Court having carefully considered all arguments raised by Anderson, we caution that any rehearing' motion containing reargument will be stricken..It is so ordered. LABARGA, C.J., and POLSTON, and LAWSON, JJ., concur. PARIENTE, J., concurs in result with an opinion. LEWIS and CANADY, JJ., concur in result.

QUINCE, J., recused.