

SUPREME COURT OF FLORIDA

Edward J. Zakrzewski, II v. State of Florida

254 So. 3d 324 (Fla. 2018) · No. SC18-646 · Decided September 20, 2018

SUMMARY

The Supreme Court of Florida affirmed the denial of Edward J. Zakrzewski’s motion for post-conviction relief under Florida Rule of Criminal Procedure 3.851. The court held that his claims based on *Hurst v. Florida* and *Hurst v. State* were procedurally barred by the prior denial of similar habeas claims and by the determination that he was not entitled to retroactive application of *Hurst*. A concurring opinion emphasized that the trial court had overridden the jury’s life recommendation for one of Zakrzewski’s three death sentences.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Chief Justice Canady; Justice Lewis; Justice Quince; Justice Polston; Justice Labarga; Justice Lawson; Justice Pariente
JURISDICTION	Florida
DECIDED	September 20, 2018
DOCKET	SC18-646
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a motion for post-conviction relief filed under Florida Rule of Criminal Procedure 3.851 and seeking relief based on <i>Hurst v. Florida</i> and <i>Hurst v. State</i> .
STANDARD OF REVIEW	The opinion does not expressly state a standard of review.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent on the procedural-bar and <i>Hurst</i> -retroactivity issues addressed by the majority.
PARTIES	Edward J. Zakrzewski, II v. State of Florida

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Zakrzewski was entitled to post-conviction relief based on the retroactive application of *Hurst v. Florida* and *Hurst v. State*.
2. Whether Zakrzewski's prior habeas proceeding raising similar *Hurst* claims constituted a procedural bar to the claims raised in the Rule 3.851 motion.

HOLDINGS

1. The prior denial of Zakrzewski's habeas petition raising similar claims constituted a procedural bar to the claims presented in this appeal.
2. Zakrzewski was not entitled to retroactive application of *Hurst*, and his claims therefore did not warrant relief.

KEY QUOTATIONS

“we conclude that our prior denial of Zakrzewski’s petition for a writ of habeas corpus raising similar claims is a procedural bar to the claims at issue in this appeal.” (254 So. 3d 324)

“All of Zakrzewski’s claims depend upon the retroactive application of Hurst, to which we have held he is not entitled.” (254 So. 3d 324)

“Hurst made clear that jury overrides are unconstitutional, and, likewise, jury overrides are not permitted under Florida’s current capital sentencing scheme.” (254 So. 3d 325 (Pariente, J., concurring in result))

FACTUAL BACKGROUND

Zakrzewski sought post-conviction 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*. His capital sentences included three death sentences, although the jury recommended life for one count by a six-to-six vote, and the trial court overrode that recommendation. The majority resolved the appeal on procedural-bar and retroactivity grounds.

PROCEDURAL HISTORY

The Okaloosa County Circuit Court denied Zakrzewski's Rule 3.851 motion. On appeal, the Florida Supreme Court ordered Zakrzewski to show cause why *Hitchcock v. State* should not control. The court concluded that its prior denial of Zakrzewski's habeas petition raising similar claims was a procedural bar and affirmed the denial of the motion.

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)
- Zakrzewski v. Jones, 221 So. 3d 1159 (Fla. 2017)
- Asay v. State, 210 So. 3d 1 (Fla. 2016), cert. denied, 138 S. Ct. 41 (2017)

OPINION

Edward J. Zakrzewski, II v. State of Florida

254 So. 3d 324

PER CURIAM.

Supreme Court of Florida _____ No. SC18-646 _____

EDWARD J. ZAKRZEWSKI, II,

Appellant, vs.

STATE OF FLORIDA,

Appellee. September 20, 2018 PER CURIAM. We have for review Edward J. Zakrzewski's appeal of the circuit court's order denying Zakrzewski's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const. Zakrzewski'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). Zakrzewski responded to this Court's order to show cause arguing why *Hitchcock v. State*, 226 So. 3d 216 (Fla.), cert. denied, 138 S. Ct. 513 (2017), should not be dispositive in this case. After reviewing Zakrzewski's response to the order to show cause, as well as the State's arguments in reply, we conclude that our prior denial of Zakrzewski's petition for a writ of habeas corpus raising similar claims is a procedural bar to the claims at issue in this appeal. All of Zakrzewski's claims depend upon the retroactive application of *Hurst*, to which we have held he is not entitled. See *Zakrzewski v. Jones*, 221 So. 3d 1159, 1159 (Fla. 2017); *Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Zakrzewski's motion. The Court having carefully considered all arguments raised by Zakrzewski, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

CANADY, C.J., and LEWIS, QUINCE, POLSTON, LABARGA, and LAWSON,

JJ., concur. PARIENTE, J., concurs in result with an opinion. PARIENTE, J., concurring in result.

I agree with the per curiam opinion that we have formerly denied Zakrzewski relief pursuant to *Hitchcock*,¹ which, of course, is now final. However, I write separately to emphasize the jury override in Zakrzewski's case. Following the penalty phase, the jury in Zakrzewski's case recommended two sentences of death—both by a vote of seven to five—and one sentence of life

1. *Hitchcock v. State*, 226 So. 3d 216 (Fla.), cert. denied, 138 S. Ct. 513 (2017).

-2- by a vote of six to six. Nevertheless, the trial court sentenced Zakrzewski to three sentences of

death, thereby overriding the jury's recommendation for life on the final sentence. See *Asay v. State* (*Asay V*), 210 So. 3d 1, 29 n.19 (Fla. 2016), cert. denied, 138 S. Ct. 41 (2017) (Labarga, C.J., concurring); *id.* at 35 n.32 (Pariente, J., concurring in part and dissenting in part). As I expressed in *Asay V*, “the jurisprudence on the acceptability of judicial overrides has so dramatically changed” since sentences like Zakrzewski's were finalized. *Id.* at 35 n.32 (Pariente, J., concurring in part and dissenting in part). *Hurst*² made clear that jury overrides are unconstitutional, and, likewise, jury overrides are not permitted under Florida's current capital sentencing scheme. See § 921.141, Fla. Stat. (2018). An Appeal from the Circuit Court in and for Okaloosa County, John T. Brown, Judge - Case No. 461994CF001283XXXAXX Martin J. McClain of McClain & McDermott, P.A., Wilton Manors, Florida, for Appellant Pamela Jo Bondi, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida, for Appellee

2. *Hurst v. State* (*Hurst*), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017); see *Hurst v. Florida*, 136 S. Ct. 616 (2016). -3-