

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)

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