

SUPREME COURT OF FLORIDA

Eriese Alphonso Tisdale v. State of Florida

Eriese Alphonso Tisdale v. State of Florida, 257 So. 3d 357 (Fla. 2018) · No. SC16-1032 · Decided November 8, 2018

SUMMARY

****Hurst error; death penalty; nonunanimous jury recommendation; harmless error review.**** The Florida Supreme Court affirmed Tisdale's first-degree murder conviction of a law enforcement officer and other charges but vacated the death sentence because the jury's 9-3 death recommendation violated ***Hurst*** (requiring unanimity), and the error was not harmless. The court rejected arguments that Chapter 2016-13 or § 775.082(2) mandated an automatic life sentence, holding that double jeopardy did not bar a new penalty phase and remanding for resentencing.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Pariente; Lewis; Quince; Labarga; Lawson; Canady; Polston
JURISDICTION	Florida
DECIDED	November 8, 2018
DOCKET	SC16-1032
DISPOSITION	other
PROCEDURAL POSTURE	Direct appeal from a judgment of conviction and sentence of death.
STANDARD OF REVIEW	Harmless error review for Hurst error; de novo for legal issues.
PRECEDENTIAL VALUE	Published
PARTIES	Eriese Alphonso Tisdale v. State of Florida

TOPICS

- criminal procedure
- sentencing
- sixth amendment
- double jeopardy
- harmless error
- statutory interpretation

PRACTICE AREAS

- Criminal Law
- Appellate Practice

QUESTIONS PRESENTED

1. Whether chapter 2016-13, Laws of Florida, entitles Tisdale to a life sentence without parole based on double jeopardy principles.
2. Whether Tisdale is entitled to automatic commutation of his death sentence to life under section 775.082(2), Florida Statutes (2012).
3. Whether Tisdale is entitled to a new penalty phase under *Hurst v. State* due to the nonunanimous jury recommendation for death.

HOLDINGS

1. Yes, because the jury's nonunanimous death recommendation (9-3) constitutes *Hurst* error that is not harmless beyond a reasonable doubt.
2. No, because jeopardy attached before the new law and the death penalty was a permissible sentence at that time, so double jeopardy does not bar a new penalty phase.
3. No, as consistently rejected in *Caylor v. State*.

KEY QUOTATIONS

“The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury’s mere recommendation is not enough.” (8)

“Hurst error occurs when the jury does not unanimously find the existence of any aggravating factor, that the aggravating factors are sufficient to impose death, and that the aggravation outweighs the mitigation.” (8-9)

“Hurst error is not harmless in cases where the jury’s recommendation is not unanimous.” (9)

FACTUAL BACKGROUND

On February 28, 2013, Sergeant Gary Morales conducted a traffic stop on Tisdale. Tisdale fled, stopped in a residential neighborhood, and when Morales approached, Tisdale exited his vehicle with a handgun, rushed Morales, and fired multiple shots, killing him. Three eyewitnesses saw the shooting. Tisdale then aimed at another officer, fled, and was arrested after a pursuit. DNA and ballistic evidence linked Tisdale to the murder weapon.

PROCEDURAL HISTORY

Tisdale was convicted of first-degree murder of a law enforcement officer and other charges. The jury recommended death by a vote of 9-3. The trial court imposed a death sentence after *Hurst v. Florida* but before *Perry*, finding the nonunanimous recommendation harmless. Tisdale appealed directly to the Florida Supreme Court.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand to the trial court for a new penalty phase pursuant to Hurst v. State.

CASES CITED

- Hurst v. Florida, 136 S. Ct. 616 (2016)
- Hurst v. State, 202 So. 3d 40 (Fla. 2016)
- Perry v. State, 210 So. 3d 630 (Fla. 2016)
- Caylor v. State, 218 So. 3d 416 (Fla. 2017)
- Victorino v. State, 241 So. 3d 48 (Fla. 2018)
- Poland v. Arizona, 476 U.S. 147 (1986)
- Kopscho v. State, 209 So. 3d 568 (Fla. 2017)
- Hojan v. State, 212 So. 3d 982 (Fla. 2017)
- Deviney v. State, 213 So. 3d 794 (Fla. 2017)
- Evans v. State, 213 So. 3d 856 (Fla. 2017)
- Dausch v. State, 141 So. 3d 513 (Fla. 2014)
- Spencer v. State, 615 So. 2d 688 (Fla. 1993)
- Bargo v. State, 221 So. 3d 562 (Fla. 2017)
- Jackson v. State, 213 So. 3d 754 (Fla. 2017)
- State v. Bright, 200 So. 3d 710 (Fla. 2016)
- Ellerbee v. State, 232 So. 3d 909 (Fla. 2017)
- Okafor v. State, 225 So. 3d 768 (Fla. 2017)