

# Supreme Court of Florida

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No. SC04-686

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**McARTHUR BREEDLOVE,**  
Petitioner,

vs.

**JAMES V. CROSBY, JR., etc.,**  
Respondent.

[October 6, 2005]

PER CURIAM.

McArthur Breedlove petitions this court for a writ of habeas corpus. We have jurisdiction. See art. V, § 3(b)(9), Fla. Const.

Breedlove was convicted of first-degree murder, burglary, grand theft, and petit theft and was sentenced to death for the murder conviction. This Court affirmed the convictions and death sentence on direct appeal. Breedlove v. State, 413 So. 2d 1, 10 (Fla. 1982). The facts and procedural history of this case are set out in this Court's prior opinions. See id.; Breedlove v. State, 580 So. 2d 605 (Fla. 1991) (trial court's denial of evidentiary hearing on merits of Florida Rule of

Criminal Procedure 3.850 motion as to Brady<sup>1</sup> claim was proper); Breedlove v. Singletary, 595 So. 2d 8 (Fla. 1992) (reversing summary denial, ordering evidentiary hearing on ineffective assistance at sentencing claim, and denying remaining claims); State v. Breedlove, 655 So. 2d 74 (Fla. 1995) (error in jury instructions on heinous, atrocious, or cruel aggravator was harmless); Breedlove v. State, 692 So. 2d 874 (Fla. 1997) (affirming denial of postconviction claim of ineffective assistance because prejudice prong was not demonstrated); Breedlove v. Crosby, 868 So. 2d 522 (Fla. 2003) (denying claim that admission of hearsay evidence at penalty phase was error following Ring v. Arizona, 536 U.S. 584 (2002)), cert. denied, 125 S. Ct. 200 (2004).

Because we have held that Crawford v. Washington, 541 U.S. 36 (2004), is not retroactive in Chandler v. Crosby, No. SC04-518 (Fla. Oct. 6, 2005), we deny the petition for a writ of habeas corpus.

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.  
WELLS, J., specially concurs with an opinion, in which CANTERO and BELL, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

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1. Brady v. Maryland, 373 U.S. 83 (1963).

WELLS, J., concurring specially.

I concur in the majority's decision in this case and agree that Crawford v. Washington, 541 U.S. 36 (2004), should not apply retroactively. However, for the reasons stated in my concurring opinion in Chandler v. Crosby, No. SC04-518 (Fla. Oct. 6, 2005), I would hold that these petitions are procedurally barred under Florida Rule of Criminal Procedure 3.851(d)(3) and also that the claims raised are not viable habeas claims under rule 3.851(d)(2)(B).

CANTERO and BELL, JJ., concur.

Original Proceeding - Habeas Corpus

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