

Supreme Court of Florida

No. SC17-1112

DOMINICK A. OCCHICONE,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 30, 2018]

PER CURIAM.

We have for review Dominick A. Occhicone's appeal of the circuit court's order denying Occhicone's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Occhicone'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 Occhicone'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, Occhicone responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Occhicone's response to the order to show cause, as well as the State's arguments in reply, we conclude that Occhicone is not entitled to relief. Occhicone was sentenced to death following a jury's recommendation for death by a vote of seven to five. See Occhicone v. State, 570 So. 2d 902, 904 (Fla. 1990).¹ His sentence of death became final in 1991. Occhicone v. Florida, 500 U.S. 938 (1991). Thus, Hurst does not apply retroactively to Occhicone's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Occhicone's motion.

The Court having carefully considered all arguments raised by Occhicone, 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.

1. Occhicone was convicted of two counts of first-degree murder, and the jury recommended a sentence of death for each count; however, the trial court sentenced Occhicone to death for only one count of first-degree murder. Occhicone, 570 So. 2d at 904. While the jury vote is not in this Court's opinion on direct appeal, this Court's opinion addressing the circuit court's denial of Occhicone's initial postconviction motion states that the jury recommended sentences of death for both murders by a vote of seven to five. Occhicone v. State, 768 So. 2d 1037, 1039 (Fla. 2000).

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.

An Appeal from the Circuit Court in and for Pasco County,
Stanley R. Mills, Senior Judge - Case No. 511986CF001355CFAXWS

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