

# Supreme Court of Florida

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No. SC17-1118

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**GARY RICHARD WHITTON,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[January 31, 2018]

PER CURIAM.

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

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

After reviewing Whitton's response to the order to show cause, as well as the State's arguments in reply, we conclude that Whitton is not entitled to relief. Whitton was sentenced to death following a jury's unanimous recommendation for death. Whitton v. State, 649 So. 2d 861, 864 (Fla. 1994). Whitton's sentence of death became final in 1995. Whitton v. Florida, 516 U.S. 832 (1995). Thus, Hurst does not apply retroactively to Whitton's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Whitton's motion.

The Court having carefully considered all arguments raised by Whitton, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.  
PARIENTE, J., concurs in result with an opinion.  
LEWIS and CANADY, JJ., concur in result.

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 Walton County,  
Michael G. Allen, Judge - Case No. 661990CF000429CFAXMX

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