

Supreme Court of Florida

No. SC17-1309

ROBERT A. CONSALVO,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 31, 2018]

PER CURIAM.

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

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

After reviewing Consalvo's response to the order to show cause, as well as the State's arguments in reply, we conclude that Consalvo is not entitled to relief. Consalvo was sentenced to death following a jury's recommendation for death by a vote of eleven to one. Consalvo v. State, 697 So. 2d 805, 811 (Fla. 1996). Consalvo's sentence of death became final in 1998. Consalvo v. Florida, 523 U.S. 1109 (1998). Thus, Hurst does not apply retroactively to Consalvo's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Consalvo's motion.

The Court having carefully considered all arguments raised by Consalvo, 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 Broward County,
Michael Ian Rothschild, Judge - Case No. 061991CF019140A88810

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