

Supreme Court of Florida

No. SC17-1778

PABLO SAN MARTIN,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[February 28, 2018]

PER CURIAM.

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

San Martin'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). After this Court decided *Hitchcock v. State*, 226 So. 3d 216 (Fla.), *cert. denied*, 138 S. Ct. 513 (2017), San Martin responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing San Martin's response to the order to show cause, as well as the State's arguments in reply, we conclude that San Martin is not entitled to relief. San Martin was sentenced to death following a jury's recommendation for death by a vote of nine to three. *San Martin v. State*, 705 So. 2d 1337, 1342 (Fla. 1997). San Martin's sentence of death became final in 1998. *San Martin v. Florida*, 525 U.S. 841 (1998). Thus, *Hurst* does not apply retroactively to San Martin's sentence of death. *See Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of San Martin's motion.

The Court having carefully considered all arguments raised by San Martin, 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 Dade County,
Ellen Sue Venzler, Judge - Case No. 131992CF006089C000XX

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for Appellee