

Supreme Court of Florida

No. SC17-2057

DARRYL BRIAN BARWICK,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[February 28, 2018]

PER CURIAM.

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

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

After reviewing Barwick's response to the order to show cause, as well as the State's arguments in reply, we conclude that Barwick is not entitled to relief. Barwick was sentenced to death following a jury's unanimous recommendation for death. *Barwick v. State*, 660 So. 2d 685, 689 (Fla. 1995). Barwick's sentence of death became final in 1996. *Barwick v. Florida*, 516 U.S. 1097 (1996). Thus, *Hurst* does not apply retroactively to Barwick's sentence of death. *See Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Barwick's motion.

The Court having carefully considered all arguments raised by Barwick, 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 Bay County,
Michael C. Overstreet, Judge - Case No. 031986CF000940XXAXMX

Linda McDermott of McClain & McDermott, P.A., Estero, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Lisa A. Hopkins, Assistant Attorney
General, Tallahassee, Florida,

for Appellee