

# Supreme Court of Florida

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No. SC17-589

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**HAROLD GENE LUCAS,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[January 24, 2018]

PER CURIAM.

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

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

After reviewing Lucas's response to the order to show cause, as well as the State's arguments in reply, we conclude that Lucas is not entitled to relief. Lucas was sentenced to death following a jury's recommendation for death by a vote of eleven to one. See Lucas v. State, 613 So. 2d 408, 409 (Fla. 1992).<sup>1</sup> Lucas's sentence of death became final in 1993. Lucas v. Florida, 510 U.S. 845 (1993). Thus, Hurst does not apply retroactively to Lucas's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Lucas's motion.

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

PARIENTE, J., concurring in result.

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1. While the jury's vote recommending a sentence of death is not reflected in this Court's opinion on direct appeal, the United States Court of Appeals for the Eleventh Circuit stated that the jury recommended a sentence of death by a vote of eleven to one. Lucas v. Sec'y, Dep't of Corr., 682 F.3d 1342, 1348-49 (11th Cir. 2012); see Appellant's Br. in Resp. to Show Cause Order, Lucas v. State, No. SC17-589 (Fla. Oct. 12, 2017), at 3.

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 Lee County,  
Joseph Cardwell Fuller, Jr., Judge - Case No. 361976CF000588000ACH

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