

Supreme Court of Florida

No. SC17-593

DANIEL JON PETERKA,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC17-1003

DANIEL JON PETERKA,
Petitioner,

vs.

JULIE L. JONES, etc.,
Respondent.

[January 22, 2018]

PER CURIAM.

Daniel Jon Peterka appeals the circuit court's order denying his motion filed pursuant to Florida Rule of Criminal Procedure 3.851 and petitions this Court for a writ of habeas corpus. We have jurisdiction. See art. V, § 3(b)(1), (9), Fla. Const.

Peterka seeks 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 Peterka's appeal and consideration of his habeas petition 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, Peterka responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in both cases.

After reviewing Peterka's response to the order to show cause, as well as the State's arguments in reply, we conclude that Peterka is not entitled to relief. Peterka was sentenced to death following a jury's recommendation for death by a vote of eight to four. Peterka v. State, 640 So. 2d 59, 65 (Fla. 1994). Peterka's sentence of death became final in 1995. Peterka v. Florida, 513 U.S. 1129 (1995). Thus, Hurst does not apply retroactively to Peterka's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Peterka's motion and deny his petition for a writ of habeas corpus.

The Court having carefully considered all arguments raised by Peterka, 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 Okaloosa County,
John T. Brown, Judge - Case No. 461989CF000966XXXAXX
And an Original Proceeding – Habeas Corpus

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