

# Supreme Court of Florida

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No. SC17-926

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**JEFFREY LEE ATWATER,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

[January 23, 2018]

PER CURIAM.

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

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

After reviewing Atwater's response to the order to show cause, as well as the State's arguments in reply, we conclude that Atwater is not entitled to relief. Atwater was sentenced to death following a jury's recommendation for death by a vote of eleven to one. Atwater v. State, 626 So. 2d 1325, 1327 (Fla. 1993). Atwater's sentence of death became final in 1994. Atwater v. Florida, 511 U.S. 1046 (1994). Thus, Hurst does not apply retroactively to Atwater's sentence of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Atwater's motion.

The Court having carefully considered all arguments raised by Atwater, 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 Pinellas County,  
Joseph Anthony Bulone, Judge - Case No. 521989CF013299XXXXNO

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