

Supreme Court of Florida

No. SC17-971

KONSTANTINOS X. FOTOPOULOS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 29, 2018]

PER CURIAM.

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

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

After reviewing Fotopoulos's response to the order to show cause, as well as the State's arguments in reply, we conclude that Fotopoulos is not entitled to relief.

Fotopoulos's jury found him guilty of two counts of first-degree murder and recommended a sentence of death for both murders by a vote of eight to four.¹

Fotopoulos v. State, 608 So. 2d 784, 787 (Fla. 1992). Following the jury's

recommendations, the trial court sentenced Fotopoulos to death on both

counts. Id. Fotopoulos's sentences of death became final in 1993. Fotopoulos v.

Florida, 508 U.S. 924 (1993). Thus, Hurst does not apply retroactively to

Fotopoulos's sentences of death. See Hitchcock, 226 So. 3d at 217. Accordingly,

we affirm the denial of Fotopoulos's motion.

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

1. Although our decision affirming Fotopoulos's death sentences does not specify the number of Fotopoulos's jurors who voted to recommend death, he represents in his response to this Court's order to show cause that the jury recommended death for both murders by a vote of eight to four. Resp. to Order to Show Cause, Fotopoulos v. State, No. SC17-971 (Fla. Oct. 17, 2017), at 2.

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 Volusia County,
James R. Clayton, Judge - Case Nos. 641989CF007632XXXAES,
641990CF001995XXXAES and 641990CF006668XXXAES

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