

Supreme Court of Florida

No. SC18-382

DUANE EUGENE OWEN,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[June 26, 2018]

PER CURIAM.

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

Owen'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). Owen responded to this Court's order to show cause arguing why *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017), *cert. denied*, 138 S. Ct. 513 (2017), should not be dispositive in this case.

After reviewing Owen’s response to the order to show cause, as well as the State’s arguments in reply, we conclude that Owen is not entitled to relief. Owen was sentenced to death following a jury’s recommendation for death by a vote of ten to two. *Owen v. State*, 596 So. 2d 985, 987 (Fla. 1992). His sentence of death became final in 1992. *Owen v. Florida*, 506 U.S. 921 (1992). Thus, *Hurst* does not apply retroactively to Owen’s sentence of death. *See Hitchcock*, 226 So. 3d at 217. Accordingly, we affirm the denial of Owen’s motion.

The Court having carefully considered all arguments raised by Owen, 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 Palm Beach County,
Glenn David Kelley, Judge - Case No. 501984CF004000AXXXMB

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, James L. Driscoll, Jr., David Dixon Hendry, and Gregory W. Brown, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Celia A. Terenzio,
Senior Assistant Attorney General, West Palm Beach, Florida,

for Appellee