

Cases that cite this headnote

237 So.3d 926
Supreme Court of Florida.

Thomas Dewey POPE, Appellant,
v.
STATE of Florida, Appellee.

No. SC17-1812

[February 28, 2018]

Synopsis

Background: Defendant filed motion for collateral relief, after his conviction and death sentence were affirmed on appeal, [441 So.2d 1073](#). The Circuit Court, Broward County, No. 061981CF003047A88810, [Michael I. Rothschild, J.](#), denied the motion. Defendant appealed.

[Holding:] The Supreme Court held that requirement that jury recommend death sentence by unanimous vote did not apply retroactively.


Affirmed.

[Pariente, J.](#), concurred in result and filed opinion.

[Lewis and Canady, JJ.](#), concurred in result.

West Headnotes (1)

[1] Courts

 In general;retroactive or prospective operation

Criminal Law

 Change in the law

Requirement that jury recommend death sentence by unanimous vote did not apply retroactively, and therefore defendant was not entitled to collateral relief from death sentence, even though jury recommended death sentences by vote of nine to three. [Fla. R. Crim. P. 3.851](#).

An Appeal from the Circuit Court in and for Broward County, [Michael I. Rothschild](#), Judge—Case No. 061981CF003047A88810

Attorneys and Law Firms

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Opinion

PER CURIAM.

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

Pope's motion sought relief pursuant to the United States Supreme Court's decision in *Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and our decision on remand in *Hurst v. State (Hurst)*, 202 So.3d 40 (Fla. 2016), *cert. denied*, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017). After this Court decided *Hitchcock v. State*, 226 So.3d 216 (Fla.), *cert. denied*, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017), Pope responded to this Court's order to show cause arguing why *Hitchcock* should not be dispositive in this case.

After reviewing Pope's response to the order to show cause, as well as the State's arguments in reply, we conclude that Pope is not entitled to relief. Pope was sentenced to death following a jury's recommendation for death by a vote of nine to *927 three, and his sentence of death became final in 1984. *Pope v. State*, 441 So.2d 1073, 1075 (Fla. 1983); *Pope v. Sec'y for Dep't of Corrs.*, 680 F.3d 1271, 1278 (11th Cir. 2012). Thus, *Hurst* does not apply retroactively to Pope's sentence of death. *See*

Hitchcock, 226 So.3d at 217. Accordingly, we affirm the denial of Pope's motion.

The Court having carefully considered all arguments raised by Pope, 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*, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in *Hitchcock*.

All Citations

237 So.3d 926, 43 Fla. L. Weekly S114