IN THE SUPREME COURT OF FLORIDA
CASE NOS. SC16-8 & SC16-56

CARY MICHAEL LAMBRIX,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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CARY MICHAEL LAMBRIX,

Petitioner,

v.

JULIE L. JONES, etc.

Respondents.

_____/

REPLY TO RESPONSE TO MOTION TO RELINQUISH JURISDICTION IN ORDER TO FILE A RULE 3.851 MOTION

COMES NOW the Appellant/Petitioner, **CARY MICHAEL LAMBRIX**, by and through counsel, and herein files this reply to Appellee/Respondents' response to motion to relinquish jurisdiction. In reply to Appellee/Respondents' response therefore, Mr. Lambrix states:

1. *Hurst v. Florida*, 2016 WL 112683 (2016), issued on Tuesday, January 12, 2016. Before Mr. Lambrix had an opportunity to present this Court with his claims premised upon the United States Supreme Court's ruling in *Hurst*, this Court

ordered the State to address the import of the *Hurst* decision in a pleading to be filed on January 15, 2016. In its January 15th pleading, the State asserted: "A *Hurst/Ring* claim is **potentially cognizable** in a motion for post conviction relief." (Response to Petition for Writ of Habeas Corpus and Memorandum of Law at 3-4) (emphasis added). On January 22, 2016, Mr. Lambrix filed a motion to relinquish jurisdiction so that he could file a motion for postconviction relief in the circuit court in accord with the State's suggestion that a *Hurst* claim was potentially cognizable in such a motion. On January 25, 2016, the State filed its response to the motion to relinquish and asserted that in fact Mr. Lambrix's *Hurst* claim was not cognizable in a motion for postconviction relief because in the 13 days since *Hurst* issued, this Court had not conducted a retroactivity analysis pursuant to *Witt v. State*, 387 So. 2d 922, 931 (Fla. 1980), and determined that *Hurst* is retroactive. (Response to Motion to Relinquish Jurisdiction at 4) ("Rule 3.851(d)(2)(B) expressly demands that a constitutional decision 'has been' held retroactive. The lower court is not empowered to make that determination in the first instance.").

2. However, this Court's jurisprudence is contrary to the State's position. This Court has not required that a finding of retroactivity under *Witt* pre-date the filing of a Rule 3.851 motion that is filed within one year of a United States Supreme Court decision and Mr. Lambrix argues that the United States Supreme Court decision is retroactive under *Witt*. One of this Court's decisions demonstrating the

State's erroneous reading of Rule 3.851(d)(2)(B) is cited in the State's response: *Johnson v. State*, 904 So. 2d 400 (Fla. 2005). In *Johnson*, a successive Rule 3.851 motion was filed more than a year after Mr. Johnson's judgment and sentence was final, but within one year of the decision in *Ring v. Arizona*, 536 U.S. 584 (2002). Yet, this Court entertained Mr. Johnson's argument that *Ring v. Arizona* was retroactive under *Witt v. State*. Though this Court ultimately rejected Mr. Johnson's *Ring* claim on the basis that *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), had held that *Ring* did not affect Florida's capital sentencing scheme and was thus not retroactive, it did not conclude that Mr. Johnson was not entitled to bring his claim that he was entitled to relief under *Ring* in a Rule 3.851 motion filed within one year of the decision in *Ring*. *See Johnson v. State*, 904 So. 2d at 413 (Wells, J., specially concurring) ("I also do not believe that Johnson states a claim for relief in this successive rule 3.851 motion pursuant to Florida Rule of Criminal Procedure 3.851(d)(2)(B). *Ring* has not been held to apply retroactively.") (footnote omitted).[1]

3. The fact that the State relies upon this Court's analysis of *Ring* in its response flies squarely in the face of its argument that this Court was without jurisdiction to consider Mr. Johnson's argument given its suggested reading of Rule 3.851(d)(2)(B). The State's argument regarding Rule 3.851(d)(2)(B) was clearly not

[1] Justices Cantero and Bell joined Justice Wells' specially concurring opinion. However, Justice Wells' position was not adopted by a majority of this Court.

accepted by a majority of this Court in *Johnson* and is just as clearly not the law since this Court considered and addressed Mr. Johnson's argument as to his entitlement to relief under *Ring v. Arizona*.

4. The State's position is also belied by this Court's more recent opinion in *Walton v. State*, 77 So. 3d 639 (Fla. 2011). There, Mr. Walton filed a Rule 3.851 motion within one year of the decision in *Porter v. McCollum*, 558 U.S. 30 (2009), arguing that the decision in *Porter* should be applied retroactively under *Witt v. State*. This Court found that the circuit court properly denied the claim because *Porter* did not qualify under *Witt* for retroactive application:

> The trial level postconviction court here properly denied Walton's second successive postconviction motion because the decision in *Porter* does not constitute a fundamental change in the law that mandates retroactive application under *Witt*. Walton filed his motion well after the one year deadline for postconviction motions under rule 3.851. Walton's claim that *Porter* applies retroactively is incorrect and insufficient as a matter of law for a successive motion because the decision in *Porter* does not concern a major change in constitutional law of fundamental significance.

Walton v. State, 77 So. 3d at 644. Thus clearly, Mr. Walton was entitled to present his claim that *Porter* was a retroactive change under *Witt* in a Rule 3.851 motion and obtain a determination of whether in fact *Porter* qualified under *Witt* for retroactive application.

5. In *Falcon v. State*, 162 So. 3d 954 (Fla. 2015), a noncapital defendant was able to present her claim for relief which rested on her argument for retroactive application of *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in a Rule 3.800. If this Court agrees with the State's argument that Mr. Lambrix cannot present his *Hurst* claims in a Rule 3.851 motion, then he asks this Court to relinquish jurisdiction so that he can present his *Hurst* claim in a Rule 3.800 motion. Indeed under *Hurst*, Mr. Lambrix only stands convicted of first degree murder which does not render him death eligible without a valid jury verdict finding the additional facts necessary for a conviction of capital first degree murder, i.e. the element rendering him death eligible has not been found in accord with the Sixth Amendment. If Ms. Falcon was entitled to present her claim under *Miller v. Alabama* in a Rule 3.800 motion more than a decade after her sentence was final, equal protection principles demand that Mr. Lambrix be entitled to present his similar claim that his sentence is constitutionally invalid under *Hurst v. Florida*. *See* Rule 3.800(a) ("A court may at any time correct an illegal sentence"). Thus, Mr. Lambrix's claim that his death sentences are illegal are not time barred.

WHEREFORE, the Appellant/Petitioner respectfully request this Court to relinquish jurisdiction to the circuit court for its consideration of his *Hurst* claim.

Respectfully submitted,

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been provided to: Scott A. Browne, Assistant Attorney General, Office of the Attorney General, 3507 East Frontage Road, Ste. 200, Tampa, FL 33607-7013, *Scott.Browne@myfloridalegal.com*; Capital Appeals Intake Box, *capapp@myfloridalegal.com*; via email service at *warrant@flcourts.org* this 26th day of January 2016.

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