

IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant/Petitioner,

v.

CASE NOS. SC16-8/SC16-56

Lower Tribunal No. 83-12-CF

STATE OF FLORIDA/

JULIE L. JONES, ETC.

Appellee/Respondents.

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APPELLEE'S RESPONSE TO APPELLANT'S SECOND MOTION TO RELINQUISH  
JURISDICTION IN ORDER TO FILE A RULE 3.851 MOTION  
BASED ON *HURST V. FLORIDA*

COMES NOW, the State of Florida, by and through the undersigned attorneys, and files its Response to Appellant's Motion to Relinquish Jurisdiction and respectfully requests that the motion be denied. As grounds therefore, the State submits the following:

On November 30, 2015, Governor Rick Scott signed Lambrix's second death warrant, and execution was scheduled for February 11, 2016. On December 15, 2015, Lambrix filed his seventh successive motion for post-conviction relief. On December 21, 2015, the lower court denied his successive motion. On January 11, 2016, Lambrix filed his initial brief and a petition for writ of habeas corpus. On January 15, 2016, the State filed its answer brief and response to petition for writ of habeas corpus. Appellant was granted an

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extension until January 22, 2016 to file his replies in both cases. On January 22, 2016, Lambrix filed a motion to relinquish jurisdiction to the trial court in order to file a successive motion for post-conviction relief. The State objected to the motion and this Court issued an order denying the motion without prejudice on February 2, 2016.<sup>1</sup> Oral argument was held before this Court on February 2, 2016.

On February 2, 2017, Defendant Cary Michael Lambrix filed a 112-page successive motion for post-conviction relief premised on Hurst v. Florida, 136 S. Ct. 616 (2016) along with his second motion to relinquish jurisdiction in this Court. The State filed a motion to strike the over length successive motion on February 3, 2017. See Attached.

Lambrix's motion to remand to the trial court to file his Hurst based claims in the trial court should be denied. The motion for relinquishment is no more persuasive now than it was when this Court previously denied it nearly one year ago. In fact, it is less so. The application of Hurst v. Florida has been fully briefed and argued in this Court. The claims underlying the successive motion are also meritless and therefore remand would be futile.

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<sup>1</sup> This Court granted Appellant's Renewed Motion for Stay of Execution in the same Order.

Lambrix's convictions and sentences were final in 1986. Lambrix v. State, 494 So. 2d 1143 (Fla. 1986). See also Fla. R. Crim. P. 3.851(d)(1)(A). In Asay v. State, Nos. SC16-223, SC16-102, SC16-628, 2016 WL 7406538 (Fla. Dec. 22, 2016), this Court ruled that Hurst cannot be applied retroactively to death sentences, like Lambrix's, that were final before the release of Ring v. Arizona, 536 U.S. 584 (2002). See also Gaskin v. State, SC15-1884, 2017 WL 224772 (Fla. Jan. 19, 2017) (Gaskin was not entitled to relief under Hurst because his sentence became final in 1993.).

Lambrix should not be granted the extravagance of filing pleadings in separate courts on the same meritless claim, then seeking further delay. Notwithstanding the fact that this Court held very clearly in Asay v. State, that Hurst cannot be applied retroactively to death sentences that were final before the release of Ring, it is evident that precedent is no boundary for Lambrix and he would now appreciate the chance to convince a circuit court judge that this Court was erroneous in deciding Asay. This Court can and should limit the extent of meritless litigation in capital cases.

The State respectfully submits that there is no reason in this long final case for remand to the lower court to entertain a post-conviction motion that raises claims based upon the

application of Hurst v. Florida, where that claim is currently pending before this Court following extensive briefing and oral argument. Moreover, since the claim lacks any merit under this Court's recent precedent, remand would be futile. Accordingly, the motion to relinquish should be denied.

WHEREFORE, the State respectfully requests that this Honorable Court deny Appellant's second motion to relinquish jurisdiction in order to file a successive Rule 3.851 motion based on Hurst v. Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2017, I filed the foregoing with the Clerk of the Florida Supreme Court by using the E-Portal Filing System which will send a notice of electronic filing to the following: William M. Hennis, III, Litigation Director of CCRC-South, Martin J. McClain, Special Assistant CCRC-South, Jessica Houston and Bryan E. Martinez, Staff Attorneys, CCRC-South, Office of the Capital Collateral Regional Counsel-South, One East Broward Boulevard, Suite 444, Ft. Lauderdale, Florida 33301 (**hennisw@ccsr.state.fl.us**, **martymcclain@earthlink.net**, **houstonj@ccsr.state.fl.us** and **martinezb@ccsr.state.fl.us**).

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

s/ Scott A. Browne  
COUNSEL FOR APPELLEE/RESPONDENTS