

IN THE SUPREME COURT OF FLORIDA

JOSEPH P. SMITH,

Appellant,

v.

CASE NO. SC20-706

L.T. No. 2004-CF-2129

DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.

_____ /

STATE'S RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW, the State of Florida, by and through the undersigned counsel, and hereby responds to this Court's order to show cause entered on February 10, 2021, as follows:

This Court ordered the State to show cause why the trial court's order reinstating the death penalty should not be reversed in light of this Court's decisions in *State v. Jackson*, 306 So. 3d 936 (Fla. 2020) (SC20-257), and *State v. Okafor*, 306 So. 3d 930 (Fla. 2020) (SC20-323).

In this case, the State actually appealed the lower court's granting of relief pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and the State lost the appeal prior to this Court entering its

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opinion in *State v. Poole*, 297 So. 3d 487 (Fla. 2020). See *State v. Smith*, 251 So. 3d 807 (Fla. 2018).

After the case was remanded back to the trial court for resentencing, the lower court reinstated the death penalty in light of this Court's *Poole* opinion. While the State feels that it is patently unjust for a resentencing to be required under the circumstances and the State has concerns about the impact of the decision on a trial court's traditional power to reconsider its prior rulings, the State acknowledges *Jackson* and *Okafor* are controlling precedent in this case.

Accordingly, this case should be remanded to the trial court to conduct a capital resentencing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2021, I electronically filed the foregoing with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: Franklin Roberts, Assistant Public Defender, 2071 Ringling Boulevard, Fifth Floor, Sarasota, Florida 34237,

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Respectfully submitted,

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