

No. 15-8753

IN THE SUPREME COURT OF THE UNITED STATES

DOYLE LEE HAMM,

Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

CORRECTED PETITION FOR REHEARING

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November 9, 2016

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PETITION FOR REHEARING 1

CONCLUSION 3

CERTIFICATE OF GOOD FAITH 4

TABLE OF AUTHORITIES

Cases

Hamm v. Allen, No. 15-8753, 2016 WL 1259209 (U.S. Oct. 3, 2016) (mem.) 1

Hurst v. Florida, No. SC12-1947, 2016 WL 6036978 (Fla. 2016) (per curiam)..... 1

Rules

Sup. Ct. R. 44.2 1

PETITION FOR REHEARING

Petitioner Doyle Lee Hamm respectfully asks this Court to grant rehearing of this Court's October 3, 2016 order, pursuant to Rule 44 of this Court. *Hamm v. Allen*, No. 15-8753, 2016 WL 1259209 (U.S. Oct. 3, 2016) (mem.). This corrected petition for rehearing calls the Court's attention to a recent development, since the denial of certiorari, that affects Petitioner's fourth question presented and may affect the Court's consideration of this case.

On October 14, 2016, the Florida Supreme Court rendered a *per curiam* decision in *Hurst v. Florida*, on remand from this Court's prior decision, stating:

[T]he Supreme Court's decision in *Hurst v. Florida* requires that all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury. We reach this holding based on the mandate of *Hurst v. Florida* and on Florida's constitutional right to jury trial, considered in conjunction with our precedent concerning the requirement of jury unanimity as to the elements of a criminal offense. In capital cases in Florida, these specific findings required to be made by the jury include the existence of each aggravating factor that has been proven beyond a reasonable doubt, the finding that the aggravating factors are sufficient, and the finding that the aggravating factors outweigh the mitigating circumstances. We also hold, based on Florida's requirement for unanimity in jury verdicts, and under the Eighth Amendment to the United States Constitution, that in order for the trial court to impose a sentence of death, the jury's recommended sentence of death must be unanimous.

Hurst v. Florida, No. SC12-1947, 2016 WL 6036978, at *4 (Fla. 2016) (per curiam).

The Florida Supreme Court's decision clearly indicates the direction that state courts are headed regarding *Hurst* claims, which were raised as part of Mr. Hamm's fourth question presented. The Florida Supreme Court's decision, which was returned after the denial of certiorari in Mr. Hamm's case, emphasizes the

importance of unanimous jury verdicts and especially of jury findings of fact.

Mr. Hamm's case, just like *Hurst*, involves the question of whether a valid death sentence requires that the jury unanimously find, beyond a reasonable doubt, all the facts necessary for imposing the death penalty. In *Hurst*, the jury had returned a split advisory recommendation on sentencing, with seven members supporting imposition of the death penalty and five members opposing it. *Hurst v. Florida*, No. SC12-1947, 2016 WL 6036978, at *9-10 (Fla. 2016). The court then sentenced the defendant to death on its own additional findings despite this divided recommendation from the jury. *Id.* After the Florida Supreme Court affirmed, this Court reversed. On remand, the Florida Supreme Court followed this Court's holding that the jury must find all facts necessary for imposing the death penalty beyond a reasonable doubt and that the jury must reach a unanimous decision if it imposes the death penalty. *Id.* at *4.

Here, like in *Hurst*, the sentencing jury returned a divided decision as to Mr. Hamm's death sentence, see Vol. 7-TR-1307, and the sentencing judge undermined the jury's authority to find all the facts necessary for imposing the death penalty. Though the sentencing jury was presented with evidence showing that Mr. Hamm had previously been charged with armed robbery, when they should only have learned that he had been convicted of simple robbery, the sentencing judge and appellate court determined that there was no error because the judge only considered the prior conviction of simple robbery. *Hurst* emphasizes the critical role of the jury as fact-finder. When the sentencing judge, rather than the jury, makes findings of fact, it improperly intrudes on this critical role.

CONCLUSION

This Court should reconsider its denial of certiorari in this case.

Respectfully submitted,

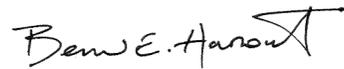
A handwritten signature in black ink that reads "Bernard E. Harcourt". The signature is written in a cursive style with a prominent flourish at the end of the name.

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CERTIFICATE OF COUNSEL (RULE 44)

As counsel of record for the Petitioner, Mr. Doyle Lee Hamm, I hereby certify that this Petition for Rehearing from denial of certiorari is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 44.2, namely intervening circumstances of substantial or controlling effect and substantial grounds not previously presented.

On November 9, 2016



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