

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR MIAMI-DADE COUNTY

THE STATE OF FLORIDA,
Plaintiff,

CRIMINAL DIVISION
CASE NO.: F76-3350B

vs.

JUDGE TINKLER MENDEZ

WILLIAM LEE THOMPSON,
Defendant

**ORDER DENYING SEVENTH MOTION TO VACATE JUDGMENTS OF
CONVICTION AND SENTENCE AND GRANTING STATE'S MOTION FOR
RECONSIDERATION**

THIS CAUSE having come before the court on the State 's Motion for Reconsideration and the Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence dated May 26, 2015, the court finds as follows:

On May 26, 2015, the Defendant filed a seventh motion for post-conviction relief. The Defendant argued that based on the cases of *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) and *Hall v. Florida*, - U.S.-, 134 S.Ct. 1986, 1990, 188 L.Ed.2d 1007 (2014), he was entitled to a new evidentiary hearing on the issue of intellectual disability. This court disagreed, and summarily denied the motion.¹ On November 10, 2016, the Supreme Court of Florida reversed and remanded the case for a new evidentiary hearing on intellectual disability that conformed to the United States Supreme Court's holding in *Hall*. *Thompson v. State*, 208 So.3d 49.

¹ A predecessor Judge had conducted a full evidentiary hearing on Mr. Thompson's claim, and entered a written order denying his intellectual disability claim. This Court's later summary denial was based on this prior determination and further articulation based on the record of that hearing, that even retroactively applying the decision in *Hall*, Mr. Thompson failed to establish his claim by sufficient evidence.

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CIRCUIT & COUNTY
MIAMI-DADE
CIRCUIT COURT
CLERK

Since remand, this court has been trying to conduct the evidentiary hearing. In this time, counsel for the Defendant, Mr. Thompson, filed various pleadings and other claims with the Supreme Court of Florida, both related and unrelated to his intellectual disability claims. First, Defendant filed SC17-2127 on December 6, 2017, seeking emergency review of a nonfinal order. That case was voluntarily dismissed two days later. Then, Defendant filed SC18-1435 where he appealed the denial of his *Hurst* motion. The Supreme Court of Florida affirmed.

Defendant also filed a Petition for Writ of Prohibition in Case number SC18-1395 seeking to preclude the State's expert from testing the Defendant unless they were permitted to video the interview/testing. The Supreme Court of Florida issued a stay of lower court proceedings on August 27, 2018. On November 28, 2018, the Supreme Court of Florida denied the writ finding that this Court did not depart from the essential requirements of law in denying the Defense request. The Defendant filed a motion for rehearing, which was denied. The Supreme Court of Florida then granted a motion for clarification which allowed the defense expert the opportunity to watch and listen to the evaluation of the Defendant from another room. As the parties engaged in scheduling the evaluation, this court then tentatively scheduled the hearing for January 2019. Unfortunately, Defense counsel had an unforeseen family illness, and, in deference to defense counsel, the hearing was not held as scheduled, but deferred to a later time to allow defense counsel the opportunity to deal with the personal matter.

Thereafter, the parties worked for several months attempting to schedule the State's expert testing of Mr. Thompson. The parties also worked to schedule the depositions of the other experts listed. The attorneys continued to request additional time to prepare for the new evidentiary hearing.

Just several months ago, the Supreme Court of Florida decided *State v. Phillips*, 2020 WL 2563476 (Fla. 2020). In *Phillips* the Supreme Court stated:

We cannot escape the conclusion that this Court in *Walls* clearly erred in concluding that *Hall* applies retroactively. We say that based on our review of *Hall*, our state's judicial precedents regarding retroactivity, and the decisions of federal habeas courts concluding that *Hall* does not apply retroactively. Based on its incorrect legal analysis, this Court used *Hall-which* merely created a limited practical effect on the administration of the death penalty in our state-to undermine the finality of numerous criminal judgments. As in *Poole*, "[u]nder these circumstances, it would be unreasonable for us *not* to recede from [Walls] erroneous holdings." *Id* at --, at S48.

The Supreme Court of Florida then concluded in *Phillips*: "Thus, we conclude that we should not continue to apply the erroneous reasoning of *Walls*. And because *Hall* does not apply retroactively, it does not entitle Phillips to a reconsideration of whether he meets the first prong of the intellectual disability standard."

After the Supreme Court of Florida released the *Phillips* opinion, the State filed a Motion to Reconsider, asking this Court to reconsider the necessity of an evidentiary hearing and to summarily deny the Defendant's Seventh Motion for Postconviction Relief. The Defendant responded to the State's Motion. In the response, the Defense relied upon *Croft v. State*, 295 So.3d 307(Fla 2d DCA 2020) and *Wittemen v. State*, 2020 WL 4909618 (Fla. 2d DCA 2020). These cases are factually distinguishable. The Defense also argued that this court should wait until the Supreme Court of Florida issues an opinion in *State v. Okafor*, SC20-323. Additionally, the Defense argues that *Phillips* is not a change of the law and cannot overrule the U.S. Supreme Court opinion in *Hall*. The Defense is correct about that. *Phillips* overrules *Walls*, which held that *Hall* was retroactive. Finally, the Defense argues that it would be a manifest injustice to denying Mr. Thompson his opportunity to have a full evidentiary hearing on the issue addressing his claim of

intellectual disability to allow a holistic assessment of his claim using appropriate clinical definitions and constitutional standards. In this regard, however, this Court believes that Mr. Thompson has had the full, comprehensive evidentiary review of his claim before a predecessor Judge, and, thereafter, by this Court, who relied on the entire record and transcript of the prior proceeding, heard additional witness testimony and additional argument and assessed Mr. Thompson's intellectual disability claim under the requisite legal and constitutional standard.

This Court has the utmost respect for our Supreme Court of Florida and would not willfully violate a mandate. However, this matter was remanded for an evidentiary hearing based upon the decision in *Walls* that *Hall* was retroactive. As was recently determined, *Walls* is no longer good law. The Supreme Court of Florida reiterated, in *Cave v. State*, 2020 WL 3088799 (Fla. 2020), that *Walls* was **erroneously decided**. The Supreme Court stated that in *Cave* that " ... [C]ave is not entitled to postconviction relief based on his intellectual disability claim. As this Court stated in *Phillips v. State*,... *Hall* does not apply retroactively. Accordingly, we affirm the postconviction court's summary denial of Cave's intellectual disability claim."

This change of law was also recently reiterated in *Lawrence v. State*, 2020 WL3088793 (Fla. 2020). As the Court found "[I]n 2018, Lawrence filed a second successive postconviction motion claiming that he is intellectually disabled. We conclude that Lawrence's argument lacks merit. As this Court stated in *Phillips v. State*, 45 Fla. L. Weekly S163, S165-67, --- So. 3d ----,-----, ---, 2020 WL 2569713 (Fla. May 21, 2020), *Hall v. Florida*, 572 U.S. 701, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014), does not apply retroactively. Therefore, Lawrence is not entitled to relief."

A few weeks ago, on August 13, 2020, the Supreme Court of Florida decided *Freeman v. State*, 2020 WL 4691639. The Court again stated that it has receded from *Walls* and that *Phillips* is the applicable law.

This court must follow the current law. Under the current law, Defendant Thompson is not entitled to relief. Again, this Court's finding and order is not to be interpreted as a lack of respect for the November 2016 order entered by the Florida Supreme Court. To the contrary, this Court believes that it is proper to follow the existing law enunciated in *Phillips*--- that *Walls* was erroneously decided, and that the *Hall* decision is not to be applied retroactively to intellectually disability claims. If this court has now erroneously interpreted the intent of the Supreme Court of Florida, it will certainly proceed to follow the Court's directive following any appeal of this order.² In the alternative, should *Okafor* be decided while the appeal in this matter is pending, and if the Florida Supreme Court holds that that the trial court cannot ignore a mandate, the parties could also file a motion to relinquish jurisdiction and this court would proceed to conduct another evidentiary hearing on Mr. Thompson's intellectual disability claim.

² Again, Defendant Thompson had a full and complete evidentiary hearing. He presented evidence on all three prongs. See Judge Scola's order attached as an exhibit to the State's Motion for Reconsideration. The Florida Supreme Court agreed. *Thompson v. State*, 41 So.3d 219 (Fla. 2010).

WHEREFORE, it is **ORDERED AND ADJUDGED** that Defendant's Successive Motion for Postconviction Relief is **DENIED**. It is **FURTHER ORDERED AND ADJUDGED** that the State's Motion for Reconsideration is **GRANTED**.

Defendant has 30 days to appeal this order.

DONE AND ORDERED in Miami-Dade County, Florida, on this 2nd day of October, 2020.


Marisa Tinkler Mendez
Circuit Court Judge

Copies to:

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