



Newsletter April, 2017

**Postal address has changed - More information at bottom of newsletter.**

Please share this newsletter with others who did not receive one. Do send us your ideas & information for the next newsletter. We also love to receive your poems and drawings to post on our Facebook page! Our next newsletter will be due around August, 2017

### *Legal Update*



It has been a very busy past few months on the legal front as the FSC continues to struggle with how the USSC decision of *Hurst v Florida*, 136 S.ct. 616 (2016) and *Hall v Florida* 134 S.ct 1086 (2014) will be applied in individual cases.

In January 2016 the USSC ruled Florida's death sentencing scheme unconstitutional. The Court, in an 8-1 ruling, applied the rule of *Ring v. Arizona*, 536 U.S. 584 (2002), holding that the Sixth Amendment requires a jury to find the aggravating factors necessary for imposing the death penalty. In Florida, under a 2013 statute, the jury made recommendations but the judge decided the facts. Specifically, *Hurst v. Florida* (U.S. Supreme Court) and *Hurst v. State* (Florida Supreme Court) struck down Florida's death penalty sentencing scheme, which previously required a judge to determine whether a capital defendant received life in prison or the death penalty, with the jury serving only in an advisory role and making its recommendation based on a simple majority vote of the jurors. Now in Florida, a death sentence must be issued by a jury and the decision must be a unanimous 12-0 vote.

The Florida legislature passed a new statute to comply with the judgement in March 2016, changing the sentencing method to require a 10-juror supermajority for a sentence of death with a life sentence as the alternative.

This new sentencing scheme was struck down by the Florida Supreme Court in a 5-2 ruling in October 2016. The court held that anything less than a unanimous jury vote would be unconstitutional under both the Florida and Federal constitution. The new law must require a 12-member jury to unanimously decide on four factors: each aggravator that makes the case particularly heinous, that the case deserves the death sentence, that the aggravators outweigh mitigators and that they are recommending death. Subsequently on December 23, 2016 the FSC released it's decision in *Mosley v State* and *Asay v. State* establishing that death row prisoners whose unconstitutional death sentences became "final" in or after 2002 will get re-sentencing, but that relief is denied to death row prisoners whose sentences had the same constitutional infirmity but had become final prior to 2002, as the court felt that it would just be too much of a burden on judicial resources to allow everyone to be resentenced. That decision is

expected to overturn approximately 200 death sentences, while permitting a similar number of prisoners whose direct appeals had already been completed to be executed despite constitutional violations in their cases.

Two justices dissented in Asay. Justice Pariente, who dissented in part, said she would apply the constitutional protections of Hurst to all prisoners facing a death sentence, regardless of timing. In his dissention, Justice Perry ended up questioning the legality of the death sentence as a whole in the state of Florida.

To confuse the issue even more, on November 10, 2016 the FSC issued it's decision in Leon Davis v State, in which the FSC held that because Davis's jury did render a 12-0 recommendation of death even after 2002, any error alleged in the illegally imposed death sentence was "harmless"! That effectively meant that even those who would otherwise be entitled to relief under Hurst/Mosley would still be denied relief if the jury did vote 12-0 on death. Several justices dissented, arguing that this standard clearly stands contrary to law that "it must be clear beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravating factors that outweighed the mitigating circumstances. The FSC then affirmed at least 3 more post Ring sentences of death based upon 12-0 jury votes in Richard Knight v State (January 31, 2017), Leo Koczmar v State (January 31, 2017) and Michael King v State (January 26, 2017). However, in Zachary Wood v State (FSC, January 31, 2017), despite having a 12-0 jury vote on death, the FSC vacated the death sentence to a life sentence, saying the death sentence was constitutionally disproportionate. Likewise, in the case of Terrance Phillips v State (November 17, 2016) the FSC threw out his death sentence upon the finding that it was disproportionate.

Then in Mullens v. State, 197 So.3d 16 (Fla. 2016) the FSC carved out yet another exception to entitlement of relief under Hurst by finding that Mullens had waived his right to an advisory jury at trial by electing to be sentenced only by the judge. The same result was issued by the FSC in the case of Tavares Wright v State (November 23, 2016), affirming his death sentence. Collectively these cases provide what has now become the framework for how FSC will apply Hurst, those 2 death sentences were imposed after 1999 (and not "final" on direct appeal by June, 2002) and would be entitled to relief from the illegally imposed death sentence as long as they had anything less than a 12 to 0 jury vote. If the jury vote in these post-Ring cases was by 11-1, or less, a presumption of entitlement to relief applies.

However, those sentenced to death prior to 1999 (whose conviction/sentence of death were affirmed on direct appeal prior to June, 2002) would not be entitled to retroactive appeal under Hurst. Equally so, even those who were sentenced after that date (post-Ring cases) who either had a 12-0 jury vote, or waived their jury determination of sentence will not be entitled to relief under Hurst unless under the unique circumstances of their case the FSC determines that the imposed sentence of death was constitutionally disproportional when compared to other cases in which a death sentence was warranted.

Ever since, the state Supreme Court has been vacating non-unanimous death sentences handed down since 2002. These inmates will face new sentencing, and they could be re-sentenced to death, but this time the jury will have to be unanimous in their decisions.

On March 16 2017, FSC reversed the death sentence of Willie James Hodges and he was granted a new sentence. On March 23 three judges vacated the death sentences of three men who were sentenced to death years ago without unanimous jury decisions: Derrick McLean, Sean Smith and David Frances. The state's highest court threw out also the death sentence for Randall Deviney. Deviney will now go back to trial for a new sentence. While the court upheld the murder conviction of Kenneth Ray Jackson, it ordered that he be resentenced because the jury's recommendation that he receive the death penalty was not unanimous.

Other important legal developments evolving from the USSC decision in Freddie Hall v Florida, 134 Sct. 1086 (2014) the USSC found that Florida's "bright-line" rule of law that automatically finds anyone with an IQ over 70 ineligible for relief under Atkins v Virginia (which prohibits the execution of those who are substantially mentally impaired) was wrong and that in determining whether a death sentenced prisoner meets the criteria of being constitutionally ineligible for death due to impaired mental functioning, the Florida Courts must consider a more flexible analysis that takes into account the individual's ability to function - and not merely a numerical IQ score. In light of this decision the FSC ordered Freddie Hall's sentence of death reduced to life, and granted further hearings to determine substantial mental impairment in the cases of William Thompson and Frank Walls. It is expected that more Florida cases will follow.

### ***Of Information:***

- **Medical** - If you want FDRAG to contact Centurion on your behalf it is necessary that you sign a medical release form (DC4-711B Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information (HIPAA Form) giving medical permission to discuss your care. You can write a DC6-236 Inmate Request to Medical Records asking to be called out to sign a release of information form. You can sign the form to Geesje de Jong, Janneke van Steenberg and Karin Elsea. **Please write to them directly about the medical issues you are seeking help with.**

- **Food/Property Packages** - Packages from Union Supply for the summer can be ordered from May 31 to June 30. The dates for Access Securepak were not available yet when this newsletter came out.

- **Mailroom** - We received letters from you about mail getting lost, returned to sender, delayed mail, stamps removed from envelopes etc. We contacted the wardens from UCI and FSP and they are looking into it. Please keep us updated how things are going.

- **Fans** - If you are still without a fan or your fan has broken down, and you are without the means to buy one, please let us know and we will try and help you. Please understand that we do need to check whether you have already a working fan in your possession.

- **USPS Postal Rate Increase** per January 22, 2017- First Class Mail Letters (1 oz.) from \$0,47 to \$ 0,49. each additional ounce will cost \$0,21. Postcards rates remain the same at \$0.34. International rates will not change in 2017.

- **Facebook** - Ask family and friends to become FDRAG friend on our Facebook page <https://facebook.com/fdrag.florida.5>

### ***Voices from Death Row - Art & Poems for book and exhibition***

The deadline for submitting artwork and poems for the book *Voices from Death Row* has been extended to December 1, 2017 and the new publication date is mid-2018. . **Poems:** must not exceed two pages and should relate to themes of peace and justice. You may submit up to 3 poems. Please send along a short note about yourself with the poem. **Drawings:** should also relate to themes of peace and justice. You may submit up to 3 drawings. Drawing on an 8.5x11" preferably heavy stock paper. Each drawing should be accompanied by a short descriptive statement (3 - 5 lines) about the meaning of the drawing and its connection to peace and justice and please sign your drawing at the bottom. Please include a short biography of yourself. Artwork will be published in "*Voices From Death Row: Poems & Drawings on Peace and Justice by Death Row Inmates in America*" to come out mid 2018. Each artist included in the book will receive a complimentary copy. The art will be exhibited at the Art Academy of Cincinnati. Please send poems and/or drawings by US mail to: SOS ART, 216 Erkenbrecher Ave, Cincinnati, OH 45229. If it is possible to send poems by e mail through a friend or penpal to: [sosartcincinnati@gmail.com](mailto:sosartcincinnati@gmail.com). If your art is selected for the book you will be notified.

### ***Mailing Address***

Please note: our postal address has changed. We want to say a big thank you to Ms Britta Slopianka for all the work she did, being our contact address for many years, despite her busy job and advocate activities. It is such a hassle to scan all the letters in a timely manner and forward them to us that we decided to change our contact address and we feel it will work out if we receive your mail directly. In that way we can help you as soon as possible. You can send your letter to: Janneke van Steenbergen - Maasdijk 1c W/S LEBA - 5317KP Nederhemert, The Netherlands OR Geesje de Jong - Maleme 17-15237 Filothei - Athens, Greece. This is meant for all the mail, except pen pal requests and card requests, for those addresses, see below.

### ***Correspondence***

Requests for assistance in finding someone to correspond with - please write to: **Sonja Döring, Postfach 100305, 95403 Bayreuth, Germany** with **some details about yourself**. We comply with **Title 33 of the Florida Administrative Code** and do not place inmate ads soliciting pen pals or market advertising services. Once you have written to us you can be assured you are on the list. Please note: Envelopes of Hope does not exist anymore, so please just write to Sonja's address.

### ***Cards***

Greeting cards can be requested from our card lady Gina Quick, She has moved home and her **NEW** address is: 2160 Mayport Road, #21, Atlantic Beach, FL 32233. **You can only order cards if you include 4 stamps in your request!!** Cards and stamps are always needed. Please ask family and friends to donate and send to Gina's address.

### ***In Memoriam***

**David Jones** 03/08/1958 - 10/11/2016

*Remembering those we have lost on the row since November. May they now R.I.P. Our thoughts and prayers are with all their families & friends.*

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**FDRAG (Florida Death Row Advocacy Group) is dedicated to working to improve the living conditions on death row in Florida and we are here to try to help you with your concerns, complaints, issues etc. For those who would like help from FDRAG, we do ask that you contact us directly (Janneke van Steenbergen and Geesje de Jong, addresses see below) and we get back to you as soon as possible.**

**Website:**[www.fdrag.kk5.org](http://www.fdrag.kk5.org)

**Facebook**

**Email:**[fdragflorida@yahoo.com](mailto:fdragflorida@yahoo.com)

<https://www.facebook.com/fdrag.florida.5>

**Geesje de Jong** - FDRAG Director - Maleme 17- 15237 Filothei - Athens, Greece. **Janneke van Steenbergen** - FDRAG Assistant Director - Maasdijk 1c W/S LEBA - 5317 KP Nederhemert, The Netherlands. **Karin Elsea** - Paralegal, General legal Questions and Medical Issues - Chemin de Beau Val 18 1012 Lausanne, Switzerland.

