

HURST V. FLORIDA: THE SUPREME COURT'S BLOW TO FLORIDA'S DEATH PENALTY

Criminal Law Section

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On January 12, 2016, the United States Supreme Court, in *Hurst v. Florida*, 136 S. Ct. 616 (2016), held that section 921.141, Florida Statutes, the state's death penalty sentencing scheme, violated defendants' Sixth Amendment right to a jury trial because the statute called for judges, not jurors, to find the facts necessary for a defendant to be sentenced to death. The Court's blow initiated the Florida legislature's triage of section 921.141 as the state's death penalty remained on the ropes. It also has sent attorneys to the mat to argue which of Florida's death row inmates, if any, will get a new day in court for re-sentencing.

Before *Hurst*, the jury would render an advisory sentence by simple majority to the trial court, without any expressed factual findings, of either life imprisonment or death, which the trial court would consider before imposing a sentence of life imprisonment or death. *Hurst* came to the Court following its holdings in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002) that the Sixth Amendment requires a jury to find any fact that exposes a defendant to a greater sentence, including death, than that

permissible only by the jury's verdict as to guilt. In the same vein, the Court held in *Hurst* that Florida's sentencing scheme was unconstitutional, particularly a jury's advisory sentence without any factual findings and the ability of the trial court to find the facts necessary to impose a death sentence despite the jury's advisory sentence.

The Florida legislature quickly addressed section 921.141's constitutional defects, and on March 7, 2016, Governor Rick Scott signed into law HB 7101. HB 7101 made some of the following reforms to Florida's death penalty sentencing scheme:

- The jury must unanimously find that at least one aggravating factor was proven beyond a reasonable doubt to return a sentence of death, and the jury must submit that factual finding to the trial court.
- Ten of the 12 jurors must agree to recommend a death sentence to the trial court.
- A recommended sentence of life imprisonment by the jury is binding on the trial court.
- If the jury recommends a death sentence, the trial court may impose the death sentence or a



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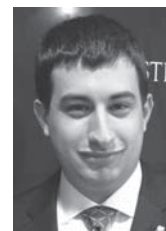
sentence of life imprisonment, but the trial court only can consider the aggravating factors that were unanimously found by the jury.

- If a defendant waives his or her right to a jury at sentencing, the trial court may still impose a sentence of death if it finds at least one aggravating factor was proven beyond a reasonable doubt.

While HB 7101 was effective immediately, several questions about *Hurst* still remain open. The Florida Supreme Court is expected to render several opinions that will determine what effect, if any, *Hurst* will have on the nearly 400 death row inmates in Florida. Furthermore, Florida remains one of only three states that do not require a jury's death recommendation be unanimous, an issue not addressed in *Hurst* but one heavily debated in reforming section 921.141. What is certain is that *Hurst* will not be the last

heavyweight match for Florida's death penalty.

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