2021 WL 1179861 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida,
Eleventh Judicial Circuit.
Miami-Dade County

The STATE of Florida, Plaintiff,
v.
Harrel BRADDY, Defendant.

No. F98-37767.
March 27, 2021.

*1 SECTION 60

Order Denying Amended Motion to Resentence (Harrel) Braddy to Life Imprisonment without the Possibility of Parole

Miguel M. de la O, Circuit Judge.

THIS CAUSE came before the Court on Defendant, Harrel Braddy's ("Braddy"), Amended Motion to Resentence [Harrel] Braddy to Life Imprisonment Without the Possibility of Parole ("Motion"). The Court has reviewed the Motion, the State's Response, Braddy's Reply, heard argument of Counsel on March 25, 2021, and is fully advised in the premises. The Motion is **DENIED**.[1]

I. BACKGROUND.

Relevant to our discussion here, Braddy was convicted of first-degree murder. After the penalty phase, the jury recommended a sentence of death by a vote of eleven to one. On direct appeal, the Florida Supreme Court affirmed Braddy's convictions in 2012. *Braddy v. State*, 111 So. 3d 810 (Fla. 2012). In 2017, pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), the Florida Supreme Court "vacate[d] the death sentence and remand[ed] [his] case for a new penalty phase." *Braddy v. State*, 219 So. 3d 803, 827 (Fla. 2017).

II. BRADDY'S CLAIM.

The Motion argues that a new penalty phase will violate Braddy's right to be free from double jeopardy under the United States and Florida Constitutions. Boiled to its essence, Braddy's argument is that this Court should deem the 11-1 vote for death an "acquittal" as to the death penalty and conclude that double jeopardy principles bar the State from again seeking a death sentence.

It is settled, and undisputed here, that the imposition of a life sentence following trial prohibits the State from subsequently seeking the death penalty at a retrial. *See* *Bullington v. Missouri*, 451 U.S. 430, 446 (1981) ("[b]ecause the sentencing proceeding at petitioner's first trial was like the trial on the question of guilt or innocence, the protection afforded by the Double Jeopardy Clause to one acquitted by a jury also is available to him, with respect to the death penalty, at his retrial."). The key question presented by the Motion is whether Braddy was "acquitted" as to the death penalty. If he was, the Motion must be granted; if he was not, it must be denied.

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Braddy argues that in *Davis v. State*, 207 So. 3d 142 (Fla. 2016), the Florida Supreme Court transformed pre-*Hurst* unanimous jury recommendations for death into binding findings of fact. On this basis, the Florida Supreme Court has declined to vacate death sentences imposed pursuant to a unanimous death recommendation where the Court could determine based on the jury instructions that the jurors made the findings *Hurst* constitutionally requires.

Braddy argues that this same analysis should be applied in cases where the jury recommendation for death was *not* unanimous. Braddy urges this Court to deem the non-unanimous recommendation for death in his case as a binding finding of fact by the jury that Braddy should not receive a death sentence. If treated as such, Braddy posits that the non-unanimous recommendation of death is actually an "acquittal" on the issue of the death penalty and, therefore, the State is barred by double jeopardy principles from again seeking a death sentence.

III. APPLICABLE LAW.

***2** Today, under the death penalty scheme Florida instituted post-*Hurst*, a non-unanimous jury verdict following a penalty phase would be an acquittal as to the death penalty. However, under the scheme in place at the time of Braddy's trial, a non-unanimous vote for death was in no sense of the word an "acquittal" with regards to the death penalty. Therefore, Braddy's claim fails.

The cases upon which Braddy bases his claim do not support the relief he seeks. The Motion's logical underpinnings rely principally on two dissents by Justice Sonia Sotomayor from denials of certiorari in *Middleton v. Florida*, 138 S. Ct. 829 (2018) and *Reynolds v. Florida*, 139 S. Ct. 27 (2018).

Setting aside the minimal, if any, precedential value of a dissent from the denial of certiorari, Justice Sotomayor does not actually endorse Braddy's argument in *Middleton* or *Reynolds*. Rather, Justice Sotomayor rejects the Florida Supreme Court's post-*Hurst* approach of denying a new penalty phase to defendants sentenced to death following unanimous jury recommendations for death. In other words, Justice Sotomayor's dissents in *Middleton* and *Reynolds* support the view that *all* defendants sentenced to death pre-*Hurst* are entitled to a new penalty phase because the jury recommendations in their cases should not be treated as binding.

The Motion also cites to *United States v. Candelario-Santana*, 977 F.3d 146 (1st Cir. 2020), where the First Circuit found the Government was barred from seeking the death penalty because the jury rendered a non-unanimous verdict of life imprisonment and the trial court imposed the sentence. When the First Circuit reversed the conviction and remanded the case for retrial, the Double Jeopardy Clause barred the Government from again seeking the death penalty because it concluded the jury had actually "acquitted" Candelario-Santana by virtue of its verdict.

In *Wright v. State*, 586 So. 2d 1024 (Fla. 2002), the jury recommended a life sentence, but the trial Court overrode the recommendation and imposed a death sentence. The Florida Supreme Court concluded the trial court erroneously overrode the jury's recommendation of life because there was evidence in the record to support the jury's recommendation. "To sustain a jury override, this Court must conclude that facts suggesting a sentence of death are so clear and convincing that virtually no reasonable person could differ." *Id.* at 1031. Because the Florida Supreme Court reversed Wright's conviction due to a jury selection error, the Court then addressed whether the jury's reasonable recommendation of life imprisonment was binding at a retrial. The Court concluded it was and barred the State from seeking a death sentence at retrial.

> Under well-settled Florida law, we have held that life imprisonment is the only proper and lawful sentence in a death case when the jury reasonably chooses not to recommend a death sentence. Thus, when it is determined on appeal that the trial court should have accepted a jury's recommendation of life imprisonment pursuant to *Tedder*, the defendant must be deemed acquitted of the death penalty for double jeopardy purposes. Art. I, § 9, Fla. Const.

> To rule otherwise would force death-sentenced prisoners to risk giving up the life recommendation by arguing for a new trial, and would place capital appellants in the anomalous position of having to choose between arguing guilt phase or penalty phase issues on appeal, even if they reasonably believe that the trial court committed reversible errors in each phase. Putting capital appellants in the position of having to make this "Hobson's choice" would be fundamentally unfair and inconsistent with the Florida Constitution. Art. I, §§ 9, 17, Fla. Const.

***3** *Id.* at 1032.

Braddy's case comes to this Court in a far different posture than *Candelario-Santana* and *Wright*. Those juries voted for a life sentence; Braddy's jury recommended a death sentence and the trial court imposed it. Braddy now asks this Court to conclude that a jury recommendation of a death sentence, and imposition of a death sentence by the trial court, should nevertheless be treated as an "acquittal" on the issue of the penalty. This conclusion is unsupported by any precedent. Indeed, all existing binding precedent steers the Court's decision in the opposite direction.

> At no point during petitioners' first capital sentencing hearing and appeal did either the sentencer or the reviewing court hold that the prosecution had "failed to prove its case" that petitioners deserved the death penalty. Plainly, the sentencing judge did not acquit, for he imposed the death penalty. While the Arizona Supreme Court held that the sentencing judge erred in relying on the "especially heinous, cruel, or depraved" aggravating circumstance, it did not hold that the prosecution had failed to prove its case for the death penalty.
>
> Petitioners argue, however, that the Arizona Supreme Court "acquitted" them of the death penalty by finding the "evidence [insufficient] to support the sole aggravating circumstances found by the sentencer." … We reject the fundamental premise of petitioners' argument, namely, that a capital sentencer's failure to find a particular aggravating circumstance alleged by the prosecution always constitutes an "acquittal" of that circumstance for double jeopardy purposes. *Bullington* indicates that the proper inquiry is whether the sentencer or reviewing court has "decided that the prosecution has not proved its case" *that the death penalty is appropriate*. We are not prepared to extend *Bullington* further ....

Poland v. Arizona, 476 U.S. 147, 154-156 (1986) (emphasis in original) (citations omitted). *See Tisdale v. State*, 257 So. 3d 357, 360–61 (Fla. 2018) ("Tisdale first argues that chapter 2016-13 should apply to his case and entitles him to a life sentence without the possibility of parole based upon double jeopardy principles. We reject this argument. Tisdale's jury was sworn and rendered its recommendation before the passage of chapter 2016-13. Because the recommendation supported imposition of the death penalty at the time the jury was sworn and jeopardy attached, double jeopardy principles do not bar a new penalty phase trial.") (citations omitted); *Victorino v. State*, 241 So. 3d 48, 50 (Fla. 2018) ("Victorino next argues that because none of the four jury recommendations for the death penalty in his case were unanimous, he was 'acquitted' of the death penalty and therefore subjecting him to a new penalty phase, in which he will again be eligible for the death penalty, violates the prohibition against double jeopardy. This claim is meritless.").

IV. CONCLUSION.

This Court is constrained to deny the Motion because it is decisively unsupported by the current state of the law. This is not to say that Braddy's Motion is without superficial appeal. The idea that a 12-0 vote to recommend death pre-*Hurst* is binding and bars a new penalty phase post-*Hurst*, but an 11-1 vote is not equally binding, can appear unfair. However, even according to Justice Sotomayor, the unfairness is to the defendants sentenced to death by unanimous jury recommendations pre-*Hurst*

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who the Florida Supreme Court deems ineligible for a new penalty phase; not to Braddy who was sentenced to death, whose conviction and death sentence were affirmed on direct appeal, and who nevertheless has been granted a new penalty phase.

***4 DONE and ORDERED** in Miami-Dade County, Florida this 27th day of March, 2021.

<<signature>>

Miguel M. de la O

Circuit Judge

Footnotes

1 The State argued during the hearing on this Motion that the Court is bound to follow the mandate of the Florida Supreme Court, which remanded Braddy' case "for a new penalty phase." Although well-taken, the point is moot because the Motion is denied on its substantive merits.

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