

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2013-CF-5781 AXXX

DIVISION: CR-D

STATE OF FLORIDA

VS.

DONALD SMITH

**MOTION TO STRIKE NOTICE OF INTENT TO SEEK THE DEATH
PENALTY AND BAR THE STATE FROM SEEKING THE DEATH
PENALTY BASED ON U.S. SUPREME COURT'S DECISION IN
*HURST V. FLORIDA***

COMES NOW, Defendant DONALD SMITH, by and through the undersigned counsel, and moves for an order requiring the State to strike its notice of intent to seek the Death Penalty in this case and bar imposition of any proceedings subjecting the Defendant to the Death Penalty under current Florida law. Defendant would state the following:

1. This case is set for trial on April 4, 2016, and the State has filed a Notice to Seek the Death Penalty pursuant to Florida Rule of Criminal Procedure 3.202. The undersigned counsel has been appointed by this Honorable Court as lead death qualified counsel under Florida Rule of Criminal Procedure 3.112. As such, the undersigned counsel has sought approval and been granted numerous experts in order to proceed for the possible imposition of the Death Penalty.

2. On January 12, 2016, the United States Supreme Court in *Hurst v. Florida*, Docket No. 14-7505, found the Florida Statutes permitting the imposition of the Death Penalty in the State of Florida to be unconstitutional as a violation of the Sixth Amendment to the Constitution. The Court answered the following important question: "Whether Florida's death sentencing scheme violates the Sixth Amendment in light of this Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002)." The Supreme Court, in an 8-1 decision, found that the current sentencing scheme in Florida was a violation of the Sixth Amendment

in that it permitted a Judge, not a jury, to make factual findings in support of the imposition of the Death Penalty. As such, until such time as a new sentencing scheme is passed by the Florida Legislature, the only possible penalty for First Degree Murder is Life Imprisonment without the possibility of parole.

4. This Court should strike the Death Notice, and move to protect Mr. Smith from a trial under a scheme which the Supreme Court has found unconstitutional.

WHEREFORE, the Defendant moves this Court to strike the Death Notice in this case and proceed to trial with the only lawful penalty applicable to a guilty verdict as charged to be Life Imprisonment without the possibility of parole.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Office of the State Attorney, electronically, this 16th day of January, 2016.

Respectfully submitted,

/s/ Julie Schlax

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