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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2016-2017

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Ex parte Ronnie Lynn Kirksey

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS**

(In re: Ronnie Lynn Kirksey

v.

State of Alabama)

**(Etowah Circuit Court, CC-07-1130;
Court of Criminal Appeals, CR-09-1091)**

MAIN, Justice.

WRIT DENIED. NO OPINION.

Stuart, C.J., and Bolin, Parker, Shaw, Wise, Bryan, and Sellers, JJ., concur.

Murdock, J., dissents.

1160522

MURDOCK, Justice (dissenting).

I would grant certiorari review in this capital case. Ronnie Lynn Kirksey, the petitioner, seeks review by this Court of a decision by the Court of Criminal Appeals upholding his sentence of death. The decision by the Court of Criminal Appeals follows certiorari review by the United States Supreme Court of the Court of Criminal Appeals' earlier decision upholding the petitioner's capital conviction and sentence of death and a remand by that Court to the Court of Criminal Appeals for further consideration of the sentence in light of the Supreme Court's holding in Hurst v. Florida, 577 U.S. ___, 136 S. Ct. 616 (2016). See Kirksey v. State, 191 So. 3d 810 (Ala. Crim. App. 2015), vacated, 578 U.S. ___, 136 S. Ct. 2409 (2016).

I am concerned that the issue whether the aggravating circumstances outweigh the mitigating circumstances in a capital case, as required for the imposition of the death penalty under Alabama law, sufficiently partakes of the nature of a factual inquiry so as to trigger the principles articulated in Hurst. I also believe this Court should further consider the petitioner's argument that the jury's

1160522

verdict was constitutionally insufficient to support a death sentence because the jury was instructed that its verdict would merely be a recommendation.