

IN THE SUPREME COURT OF THE STATE OF FLORIDA
CASE NO. SC18-964
Lower Court Case No: 4D17-2151

LINDA PEDROZA,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

PETITIONER’S BRIEF ON JURISDICTION

On Discretionary Review From a Decision
of the Fourth District Court of Appeal

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STATEMENT OF THE CASE AND FACTS

All facts are found within the four corners of the opinion on review, *Pedroza v. State*, 4D17-2151, 2018 WL 2434763 (Fla. 4th DCA May 30, 2018), which is provided as Appendix 1 to this brief.

Petitioner appealed from the summary denial of her Florida Rule of Criminal Procedure 3.800(a) motion, which argued that her forty-year sentence for second-degree murder violated the Eighth Amendment. (Slip. Op. 1). Petitioner committed the homicide offense while a juvenile and her sentence does not contain judicial review, as it was imposed prior to Chapter 2014-220's enactment.

The Fourth District Court of Appeal affirmed the summary denial of Petitioner's Rule 3.800(a) motion, explaining as follows:

[Petitioner] has not shown that her sentence, imposed when she was a juvenile for the murder of her mother, violates the Eighth Amendment as construed by any decision of the Supreme Court of the United States. Nor has she identified any clear, binding Florida Supreme Court decision that requires resentencing. We note the Florida Supreme Court's recent decisions in both *Morris v. State*, — So.3d — —, 43 Fla. L. Weekly S223a, 2018 WL 2146786 (Fla. May 10, 2018) and *Williams v. State*, — So.3d — —, 43 Fla. L. Weekly S183, 2018 WL 1870518 (Fla. Apr. 19, 2018), involved concessions of error by the state.

(Slip. Op. 1).

Finding that no authority from this Court or the United States Supreme Court mandated a resentencing, the Fourth District affirmed based on its decision in *Hart v. State*, 43 Fla. L. Weekly D970 (Fla. 4th DCA May 2, 2018). (Slip. Op.

1). A notice to invoke this Court’s discretionary review has been filed in *Hart*, but this Court has not decided whether to accept review. *See Hart v. State*, SC18-967.

As was done in *Hart*, the Fourth District certified conflict with the following decisions from the Second and Fifth District Courts of Appeal: *Cuevas v. State*, 43 Fla. L. Weekly D563 (Fla. 2d DCA Mar. 9, 2018); *Blount v. State*, 238 So. 3d 913 (Fla. 2d DCA 2018); *Mosier v. State*, 235 So. 3d 957 (Fla. 2d DCA 2017); *Alfaro v. State*, 233 So. 3d 515, 516 (Fla. 2d DCA 2017); *Burrows v. State*, 219 So. 3d 910, 911 (Fla. 5th DCA 2017). (Slip. Op. 1-2).

Because Petitioner—unlike the defendant in *Hart*—committed a homicide offense, the Fourth District also certified conflict with the Fifth District Court of Appeal’s decisions in *Katwaroo v. State*, 237 So. 3d 446 (Fla. 5th DCA 2018), and *Tarrand v. State*, 199 So. 3d 507 (Fla. 5th DCA 2016). (Slip. Op. 2).

Petitioner filed a timely notice to invoke the discretionary jurisdiction of this Court on June 13, 2018.

SUMMARY OF THE ARGUMENT

The issue in this case is whether a forty-year prison sentence for a homicide offense committed when Petitioner was a juvenile violates the Eighth Amendment. (Slip. Op. 1). This Court recently resolved this same issue in *Walters v. State*, 42 Fla. L. Weekly S751 (Fla. June 23, 2017), remanding a juvenile homicide offender's original forty-year sentence for resentencing under Chapter 2014-220.

This Court should accept jurisdiction to review the instant case for two reasons. First, the Fourth District's opinion certified conflict with numerous Second and Fifth District decisions on the same point of law. *See Cuevas v. State*, 43 Fla. L. Weekly D563 (Fla. 2d DCA Mar. 9, 2018); *Blount v. State*, 238 So. 3d 913 (Fla. 2d DCA 2018); *Mosier v. State*, 235 So. 3d 957 (Fla. 2d DCA 2017); *Alfaro v. State*, 233 So. 3d 515, 516 (Fla. 2d DCA 2017); *Burrows v. State*, 219 So. 3d 910, 911 (Fla. 5th DCA 2017); *Katwaroo v. State*, 237 So. 3d 446 (Fla. 5th DCA 2018); *Tarrand v. State*, 199 So. 3d 507 (Fla. 5th DCA 2016).

Second, the instant case expressly and directly conflicts with this Court's decisions in *Henry v. State*, 175 So. 3d 675 (Fla. 2015); *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016); *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017); *Lee v. State*, 234 So. 3d 562 (Fla. 2018); *Walters v. State*, 42 Fla. L. Weekly S751 (Fla. June 23, 2017), and *Morris v. State*, 43 Fla. L. Weekly S223 (Fla. May 10, 2018).

ARGUMENT

THIS COURT HAS JURISDICTION UNDER ARTICLE V, SECTIONS 3(B)(3) AND 3(B)(4) OF THE FLORIDA CONSTITUTION BECAUSE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL (1) CERTIFIES CONFLICT WITH DECISIONS OF THE SECOND AND FIFTH DISTRICT AND (2) DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT

I. Basis of Jurisdiction

This Court has two jurisdictional bases to accept review of the instant case. First, the Fourth District certified that the instant opinion is in direct conflict with multiple decisions from the Second and Fifth District Courts of Appeal. *See* Art. V, § 3(b)(4), Fla. Const. Second, the Fourth District’s opinion expressly and directly conflicts with decisions from this Court. *See* Art. V, § 3(b)(3), Fla. Const.

II. Certified Conflict

The issue in this case is whether a forty-year prison sentence for a homicide offense committed when Petitioner was a juvenile violates the Eighth Amendment. In denying relief, the Fourth District found Petitioner failed to “show[] that her sentence . . . violates the Eighth Amendment as construed by any decision of the Supreme Court of the United States.” (Slip. Op. 1). Furthermore, the Fourth District held there was no “clear, binding Florida Supreme Court decision that requires resentencing” of an original-forty year prison sentence. (Slip. Op. 1).

This latter holding is contrary to numerous decisions from the Second and Fifth Districts, which have held that opinions from this Court—including *Henry v. State*, 175 So. 3d 675 (Fla. 2015); *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016); and *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017)—mandate a resentencing for all juvenile offenders whose sentences meet the standard for judicial review defined by chapter 2014-220 but have not received the benefit of the statute.

Given this legal disagreement, the Fourth District rightly certified conflict with the following decisions: *Cuevas v. State*, 43 Fla. L. Weekly D563 (Fla. 2d DCA Mar. 9, 2018) (reversing the denial of a rule 3.800(a) motion and concluding that a juvenile non-homicide offender’s sentences of 26 years in prison were unconstitutional under *Graham* as construed in *Henry* and *Johnson*); *Blount v. State*, 238 So.3d 913 (Fla. 2d DCA 2018) (reversing the denial of a rule 3.800(a) motion to correct juvenile nonhomicide sentences of 40 years in prison and remanding for resentencing pursuant to *Johnson*); *Mosier v. State*, 235 So.3d 957 (Fla. 2d DCA 2017) (reversing the denial of a rule 3.800(a) motion and concluding that a juvenile non-homicide offender’s sentences of 30 years in prison followed by 10 years of sexual offender probation were unconstitutional under *Graham* as construed in *Henry* and *Johnson*); *Alfaro v. State*, 233 So.3d 515, 516 (Fla. 2d DCA 2017) (reversing 30–year sentences for nonhomicide offenses and rejecting trial court’s conclusion that “*Kelsey* only applied to juvenile offenders like *Kelsey*

who initially received life sentences but had been resentenced to a term of years under *Graham*”); *Burrows v. State*, 219 So.3d 910, 911 (Fla. 5th DCA 2017) (reversing denial of postconviction relief and remanding for resentencing where juvenile offender received 25–year sentences for non-homicide offenses).

Because Petitioner committed a homicide offense, the Fourth District also correctly certified conflict with: *Tarrand v. State*, 199 So. 3d 507, 509 (Fla. 5th DCA 2016) (reversing 51-year sentence for homicide offense on the basis that the “supreme court intends to apply the holdings of *Henry* and [*Gridine v. State*, 175 So. 3d 672 (Fla. 2015)] to juvenile homicide offenders who receive lengthy term-of-years sentences”), and *Katwaroo v. State*, 237 So. 3d 446, 447 (Fla. 5th DCA 2018) (reversing denial of 3.800(a) motion and remanding for resentencing where defendant received a 30-year sentence for murder that lacked judicial review).

Like the defendants in *Cuevas*, *Blount*, *Mosier*, *Alfaro*, *Burrows*, *Tarrand*, and *Katwaroo*, Petitioner would be entitled to a resentencing for her forty-year prison sentence had she challenged the constitutionality of her sentence in the Second or Fifth Districts. Accordingly, the Fourth District’s decision to affirm presents a direct and express conflict, providing this Court with jurisdiction.

III. Express and Direct Conflict With Decisions From This Court

The Fourth District’s opinion also expressly and directly conflicts with decisions of this Court on the same issue of law. *See Reaves v. State*, 485 So. 2d

829, 830 (Fla. 1986) (explaining that conflict between decisions “must be express and direct” and “must appear within the four corners of the majority decision”).

In *Henry v. State*, 175 So. 3d 675 (Fla. 2015), this Court extended *Graham v. Florida*, 560 U.S. 48 (2010), to term-of-year prison sentences that “[do] not afford any ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’” *Id.* at 679. This Court reasoned that “the Eighth Amendment will *not* tolerate prison sentences that lack a review mechanism for evaluating this special class of [juvenile] offenders for demonstrable maturity and reform in the future.” *Id.* at 680.

Through *Kelsey*, this Court clarified that “*Henry* was not predicated on the term of the sentence but rather on the status of, and the opportunity afforded, the offender.” *Kelsey v. State*, 206 So. 3d 5, 9 (Fla. 2016). To ensure juveniles are afforded such opportunity, this Court held “that all juvenile offenders whose sentences meet the standard defined by the Legislature in chapter 2014-220 . . . are entitled to judicial review.” *Kelsey*, 206 So. 3d at 8. “After . . . ma[king] clear that *Graham* does indeed apply to term-of-years sentences,” this Court also expressly “declined to require that such sentences must be ‘de facto life’ sentences for *Graham* to apply.” *Id.* at 10.

In *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017), this Court further clarified the above principles by holding that three factors must be considered in reviewing a juvenile's term of years sentence post-*Henry*:

Post-Henry, we must ensure that a juvenile nonhomicide offender does not receive a sentence that provides for release only at the end of a sentence (e.g. a 45-year sentence with no provision for obtaining early release based on a demonstration of maturity and rehabilitation before the expiration of the imposed term, such as in Kelsey). Secondly, we must ensure that a juvenile nonhomicide offender who is sentenced post-Henry does not receive a sentence which includes early release that is not based on a demonstration of rehabilitation and maturity (i.e. gain time or other programs designed to relieve prison overpopulation). Last, we must ensure that a juvenile nonhomicide offender who is sentenced post-Henry does not receive a sentence that provides for early release at a time beyond his or her natural life (e.g. a 1,000-year sentence that provides parole-eligibility after the offender serves 100 years). To qualify as a "meaningful opportunity for early release," a juvenile nonhomicide offender's sentence must meet each of the three parameters described in Henry."

Id. at 1243; *see, e.g., Lee v. State*, 234 So. 3d 562, 564 (Fla. 2018) (applying the three factors described in *Johnson* to reverse a juvenile's 40-year sentence).

Applying the above principle, this Court remanded for resentencing under circumstances indistinguishable from the present in *Walters v. State*, SC16-2188, 2017 WL 2709774 (Fla. June 23, 2017). There, the defendant was sentenced to forty years imprisonment without judicial review for the second-degree murder he committed while seventeen years old. *See Walters v. State*, 210 So. 3d 209, 210 (Fla. 2d DCA 2016). The Second District rejected the defendant's argument that he

was entitled to be resentenced under Chapter 2014-220, even though his crime was committed before the effective date of the statute. *Id.*

On further appeal, this Court entered a disposition order that “accept[ed] jurisdiction in th[e] case consistent with *Kelsey*” The disposition order noted that the State “concede[d] that Kelsey mandates resentencing in conformance” with the new statutes. Therefore, this Court quashed the Second District’s decision and remanded the case “for further proceedings consistent with *Kelsey*.” *Walters v. State*, SC16-2188, 2017 WL 2709774 (Fla. June 23, 2017); *see also Thomas v. State*, 177 So. 3d 1275 (Fla. 2015) (remanding for resentencing where defendant was resentenced after *Miller* to forty years imprisonment for homicide offense).

The instant case is identical to *Walters*, as Petitioner received an original forty-year imprisonment sentence for second-degree murder without the benefit of Chapter 2014-220. Accordingly, Petitioner is entitled to the same relief.

Most recently, in *Morris v. State*, SC16-2271, 2018 WL 2146786 (Fla. May 10, 2018), this Court remanded a juvenile nonhomicide offender’s original thirty-year sentence for resentencing. *Id.* at *1. In a plurality opinion joined by three justices¹—Pariante, Quince, and Labarga—this Court explained that “[b]ecause the sentencing court did not make the required findings at [the defendant’s] sentencing

¹ Justice Lewis concurred in result only without a written opinion. Justices Lawson, Canady, and Polston dissented in a written opinion.

hearing to comport with chapter 2014-220, Laws of Florida, and [the defendant’s] sentence lacks any review mechanism,” the defendant was entitled to a resentencing “based upon this Court’s precedent.” *Morris*, SC16-2271, 2018 WL 2146786, at *1. The “precedent” referenced by the preceding quotation was *Lee* and *Johnson*.²

The Fourth District’s opinion in the instant case conflicts with this Court’s clear mandate in *Henry*, *Kelsey*, *Johnson*, *Lee*, *Walters*, and *Morris* “that all juvenile offenders whose sentences meet the standard defined by the Legislature in chapter 2014-220 . . . are entitled to judicial review.” *Kelsey*, 206 So. 3d at 8. In *Walters*, this Court remanded a case for resentencing where the juvenile homicide offender received the same original sentence as Petitioner—forty years imprisonment. Petitioner requests that this Court accept review of her case and enter disposition consistent with *Walters*.

CONCLUSION

Based on the foregoing arguments and authorities, Petitioner requests that this Court exercise its discretion and accept jurisdiction of this cause for review.

² In the instant opinion, the Fourth District “noted” that *Morris* “involved [a] concession[] of error by the state.” (Slip. Op. 1). However, this is misleading. The State in *Morris* did not concede the defendant was entitled to a resentencing. In fact, the State has moved for rehearing in *Morris* based upon the instant case and *Hart v. State*, 43 Fla. L. Weekly D970 (Fla. 4th DCA May 2, 2018).

CERTIFICATE OF FONT

I certify that this brief was prepared with 14 point Times New Roman type in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ BENJAMIN EISENBERG
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CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I certify that this brief was electronically filed with the Court and a copy of it was served to Matthew Ocksrider, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by email at CrimAppWPB@MyFloridaLegal.com this 19th day of June, 2018.

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