

IN THE SUPREME COURT OF FLORIDA

DARRYL LEN MORGAN

VS.

STATE OF FLORIDA

CERTIFIED COPIES OF APPEAL PAPERS

CASE NO. SC20-641

DOCKET NO. 18-4940

RECEIVED, 07/07/2020 02:37:37 PM, Clerk, Supreme Court

CASE NO. SC20-641
DOCKET NO. 18-4940

DARRYL LEN MORGAN v. STATE OF FLORIDA

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Filed Jun 29, 2020

0004

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY**

NOTICE OF APPEAL TRANSMITTAL FORM

DARRYL LEN MORGAN

APPELLANT

VS.

STATE OF FLORIDA

APPELLEE

LOWER CASE NUMBER: 7903874CFASO

APPEAL CASE NUMBER:

CASE(S) RELATED TO APPEAL:

- ☒ The accompanying notice of appeal was filed on December 7, 2018. A certified electronic copy of the notice accompanies this form.
- ☐ The civil notice carried with it a copy of the order appealed, which is transmitted with the notice.
- ☐ The civil notice was not accompanied by a copy of the order appealed.
- ☐ The district court's filing fee has been received and will promptly be forwarded to the court by U.S. Mail.
- ☒ There is no filing fee in this type of proceeding (e.g., dependency/termination of parental rights; post conviction and habeas corpus appeals; delinquency appeals; administrative reemployment assistance appeals initiated by an employee).
- ☒ The appellant has been determined to be indigent. Included in the transmission of the notice of appeal is an order or certificate of insolvency.
- ☐ An appellate filing fee appears to be required but has not been paid.
- ☐ This is dependency/termination of parental rights case. A designation to the court reporter ☐ does or ☐ does not accompany the notice of appeal in the transmission to the district court.

RECEIVED, 12/13/2018 3:16 PM, Clerk, Second District Court of Appeal

0005

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY**

CASE TYPE:

- ☐ Summary post conviction appeal. An electronic bookmarked record is being transmitted to the district court's FTP server contemporaneously with the notice of appeal.
- ☐ Summary post conviction appeal. The electronic record cannot be transmitted at this time but will follow within days.
- ☒ Non summary post conviction appeal. The lower tribunal clerk HAS NOT treated the notice of appeal as a designation to the court reporter as designations have been filed.
- ☐ Judgment and sentence appeal.
- ☐ Juvenile delinquency appeal.
- ☐ State criminal appeal.
- ☐ Dependency/termination of parental rights appeal.
- ☐ Other civil appeal, including probate/guardianship, Ryce, Baker Act, etc.
- ☐ Administrative appeal.
- ☐ Criminal appeal of unknown case classification. A copy of the order that seems to be appealed is included in this transmission, or it is impossible to determine what order the appellant is attempting to appeal.
- ☐ Further comments that might be of value to the circuit court in determining case classification and jurisdiction are:

By: /s/ Susan Colton

Deputy Clerk

12/13/2018

/sc

Enc.

cc: Attorney General, Tampa, FL

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
REF: 7903874CFASO

DARRYL LEN MORGAN,
SPN: 66892
Defendant, Appellant

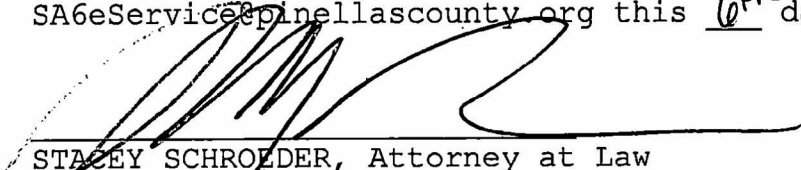
vs.

STATE OF FLORIDA,
Plaintiff, Appellee.

NOTICE OF APPEAL

NOTICE IS GIVEN that DARRYL LEN MORGAN, Defendant, Appellant, appeals to the District Court of Appeal, Second District, State of Florida, the Order Denying Defendant's Motion to Correct Illegal Sentence rendered on November 30, 2018.

I CERTIFY that a copy of the foregoing has been e-mailed to the Criminal Appeals Division of the Attorney General at CrimappTPA@myfloridalegal.com and the State Attorney at SA6eService@pinellascounty.org this 6th day of December, 2018.


STACEY SCHROEDER, Attorney at Law
Florida Bar No. 65676, For
PUBLIC DEFENDER, SIXTH JUDICIAL CIRCUIT
Criminal Justice Center
14250 49th Street North
Clearwater, FL 33762 (727) 464-6516



STATE OF FLORIDA-PINELLAS COUNTY

I hereby certify that the foregoing is a true copy as the same appears among the files and records of this court.

This 13th day of December, 2018
KEN BURKE
Clerk of Circuit Court & Comptroller

By: Laura E. Corio
Deputy Clerk

FILED
CRIMINAL COURT
2018 DEC - 7 PM 2:4
KEN BURKE
CLERK OF CIRCUIT COURT
PINELLAS COUNTY, FLORIDA

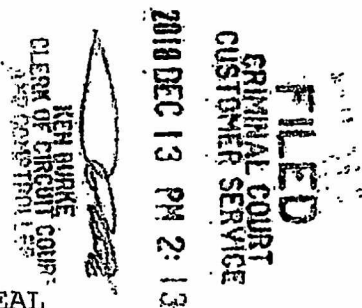
IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
REF: 7903874CFASO

DARRYL LEN MORGAN,
SPN: 66892
Defendant, Appellant

vs.

STATE OF FLORIDA,
Plaintiff, Appellee

ORDER OF INSOLVENCY AND
APPOINTMENT OF PUBLIC DEFENDER FOR APPEAL

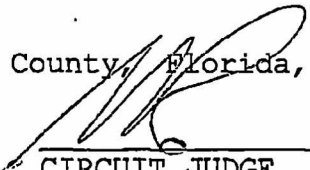


The Defendant seeking appellate review of this Court's prior Orders, Judgments, and Sentences, and the Court finding that the Defendant has previously been adjudged insolvent, it is upon consideration,

ORDERED that the Defendant is hereby declared to be insolvent within the meaning of Florida Statute 924.17 and unable to employ counsel for the prosecution of the appeal.

IT IS FURTHER ORDERED that the Public Defender of the Sixth Judicial Circuit is hereby appointed as counsel to represent the Defendant in said cause before the Second District Court of Appeal, Lakeland, Florida.

DONE AND ORDERED at Clearwater, Pinellas County, Florida, this 12 day of December, 2018.


CIRCUIT JUDGE

COPIES TO:
Public Defender
State Attorney
Attorney General
Digital Court Reporting
Steno Court Reporting

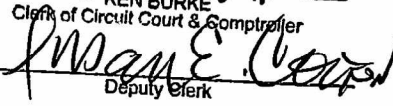


STATE OF FLORIDA-PINELLAS COUNTY

I hereby certify that the foregoing is a true copy as the same appears among the files and records of this court.

This 13 day of December, 2018

KEN BURKE
Clerk of Circuit Court & Comptroller

By: 
Deputy Clerk



DISTRICT COURT OF APPEAL
SECOND DISTRICT
Post Office Box 327
LAKELAND, FLORIDA 33802
(863)940-6060

ACKNOWLEDGMENT OF NEW CASE

DATE: December 14, 2018

STYLE: DARRYL LEN MORGAN v. STATE OF FLORIDA

2DCA#: 2D18-4940

The Second District Court of Appeal has received the Appeal reflecting a filing date of December 13, 2018.

The county of origin is Pinellas.

The lower tribunal case number provided is 79-3874CFASO.

The filing fee is: No Fee-3.850.

Case Type: Criminal 3.850 Final Non-Summary

The Second District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc: Attorney General, Tampa Stacey M. Schroeder, A. P. D. Ken Burke, Clerk

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT

DARRYL LEN MORGAN,

Appellant,

vs.

Case No. 2D18-4940

STATE OF FLORIDA,

Appellee.

**DESIGNATION OF THE PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT FOR
HANDLING APPEAL**

Pursuant to sec. 27.51(4), Florida Statutes, the undersigned Public Defender has requested **HOWARD L. "REX" DIMMIG, II, PUBLIC DEFENDER, TENTH JUDICIAL CIRCUIT**, to handle the above-styled cause for appeal to the District Court of Appeals, Second District, State of Florida. Notice is hereby given that henceforth all correspondence and copies of pleadings in this case should be served on the Public Defender of the Tenth Judicial Circuit.

I CERTIFY that a copy of the foregoing has been emailed to the Office of Attorney General at CrimappTPA@myfloridalegal.com, and emailed to the Office of the Public Defender, Tenth Circuit, at appealfilings@pd10.org, on this 18TH day of January, 2019.

Respectfully submitted,

/s/ SARA BETH MOLLO

SARA BETH MOLLO, Attorney at Law
Florida Bar No. 81159, FOR
PUBLIC DEFENDER, SIXTH JUDICIAL CIRCUIT
CRIMINAL JUSTICE CENTER
14250 49th Street North
Clearwater, FL 33762 (727) 464-6516

RECEIVED, 01/18/2019 08:00:25 AM, Clerk, Second District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DARRYL MORGAN,	:	
Appellant,	:	
vs.	:	Case No. 2D18-4940
STATE OF FLORIDA,	:	
Appellee.	:	
_____	:	

MOTION TO SUPPLEMENT AND FOR AN EXTENSION OF TIME

COMES NOW the Appellant, Darryl Morgan, by and through the undersigned counsel, to move to supplement the record and for an extension of time for this purpose. As grounds therefore the following is stated:

1. Undersigned was appointed/designated to represent Mr. Morgan for purposes of appeal. The record on appeal was received on January 18, 2019, however was not complete. The record was missing: a copy of the information. This item is necessary to pursue Appellant's appeal effectively.

2. Appellant requests 30 days in which to receive this supplement (directions to the clerk and designations to the court reporter are being mailed to the lower court on this date) and 60 days in which to prepare the brief. If the supplement is not received within 30 days or if the court reporter has not asked for an extension of time, undersigned counsel will file a motion to compel with this court.

RECEIVED, 01/22/2019 09:01:26 AM, Clerk, Second District Court of Appeal

WHEREFORE, Appellant requests that this motion to supplement the record and to extend time for filing Appellant's brief be granted.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 22nd day of January, 2019.

Respectfully submitted,



HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

/S/ LISA LOTT
Intake Attorney
Florida Bar Number 0710555
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.state.fl.us
llott@pd10.state.fl.us
kstockman@pd10.state.fl.us

LL/kas

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA,	:	
Plaintiff, Appellee,	:	
vs.	:	2D18-4940 Case No. 79-3874CFASO
DARRYL MORGAN,	:	
Defendant, Appellant.	:	
_____	:	

SUPPLEMENTAL DIRECTIONS TO THE CLERK

Defendant directs the clerk to include the following items in the record on appeal:

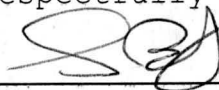
1. Supplemental directions.
2. Copy of information / indictment filed 6/27/79.

Please note that the supplement pages must be numbered consecutively to the pages in the original record or any other supplement previously filed. See Fla. R. App. P. 9.200(d)(1)(B).

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 20th day of January, 2019.

Respectfully submitted,



HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

/S/ LISA LOTT
Intake Attorney
Florida Bar Number 0710555
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.state.fl.us
llott@pd10.state.fl.us
kstockman@pd10.state.fl.us

LL/kas

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

January 24, 2019

CASE NO.: 2D18-4940

L.T. No.: 79-3874CFASO

DARRYL LEN MORGAN

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion to supplement the record and for an extension of time is granted. Supplemental directions having already been filed, the clerk of the trial court is directed to supplement the record within thirty days, and the initial brief shall be served within sixty days of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa

Howard L. Dimmig, II, P. D.
Ken Burke, Clerk

Lisa B. Lott, A.P.D.

ks


Mary Elizabeth Kuenzel
Clerk



IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DARRYL MORGAN,	:	
Appellant,	:	
vs.	:	Case No. 2D18-4940
STATE OF FLORIDA,	:	
Appellee.	:	
_____	:	

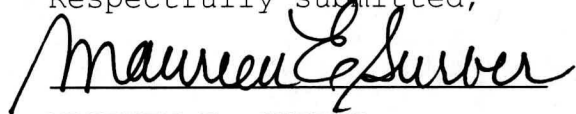
NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned attorney hereby appears for DARRYL MORGAN, Appellant in the above-styled cause of action.

CERTIFICATE OF SERVICE

I certify that a copy has been e-filed to ASHLEY MOODY, Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 15th day of March, 2019.

Respectfully submitted,



HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

MAUREEN E. SURBER
Assistant Public Defender
Florida Bar Number 0153958
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.org
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MES/ks

RECEIVED, 03/01/2019 11:20:33 AM, Clerk, Second District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DARRYL LEN MORGAN,
Appellant,
vs.
STATE OF FLORIDA,
Appellee.

Case No. 2D18-4940

FIRST MOTION FOR AN EXTENSION OF TIME

COMES NOW the Appellant, DARRYL LEN MORGAN, by and through the undersigned counsel, to move for an extension of time in this case. As grounds therefore the following is stated:

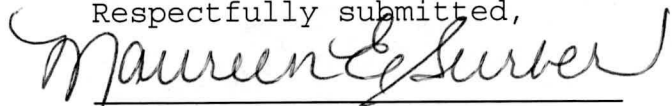
1. Due to undersigned's caseload, a 60-day extension of time is necessary in which to file Appellant's brief. This is the first request for an extension in this case.

WHEREFORE, Appellant requests that this motion to extend time for filing Appellant's brief be granted.

CERTIFICATE OF SERVICE

I certify that a copy has been e-served to ASHLEY MOODY at CrimAppTPA@myfloridalegal.com on this 28th day of March, 2019.

Respectfully submitted,



HOWARD L. "REX" DIMMIG, II
Public Defender
TENTH Judicial Circuit
(863) 534-4200

MAUREEN E. SURBER
Assistant Public Defender
Florida Bar Number 0153958
P. O. Box 9000 - Drawer PD
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msurber@pd10.org
kstockman@pd10.org

RECEIVED, 03/28/2019 01:08:36 PM, Clerk, Second District Court of Appeal

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

March 29, 2019

CASE NO.: 2D18-4940

L.T. No.: 79-3874CFASO

DARRYL LEN MORGAN

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time is granted, and the initial brief shall be served within 60 days from the date of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa

Maureen E. Surber, A.P.D.

Ken Burke, Clerk

ec

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



DARRYL LEN MORGAN, :

Appellant, :

vs. : Case No. 2D18-4940

STATE OF FLORIDA, :

Appellee. :

_____ :

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

HOWARD L. "REX" DIMMIG, II
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

MAUREEN E. SURBER
Assistant Public Defender
FLORIDA BAR NUMBER 0153958

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(863) 534-4200

ATTORNEYS FOR APPELLANT

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STATEMENT OF THE CASE AND FACTS

This is the appeal of an Order Denying Motion to Correct Illegal Sentence. However, in this case, the trial court granted the motion years prior and only after new caselaw became available did the court reconsider the motion and deny it. Because the trial court lacked jurisdiction to revisit its earlier ruling, this Court should reverse and remand for reinstatement of the original order.

The Appellant, DARRYL LEN MORGAN, was a 16-year old juvenile when he was convicted of murder in the second degree and was sentenced to life in prison with the possibility of parole after 25 years. (R19-23) Mr. Morgan filed a motion to correct illegal sentence, arguing he was entitled to be resentenced under section 921.1401, Florida Statutes (2014) based on the Miller v. Alabama, 132 S.Ct. 2455 (2012) and Atwell v. State, 197 So. 3d 1040 (Fla. 2016) decisions. (R19-23) Notably, on January 3, 2017, the trial court granted the motion, finding Mr. Morgan was entitled to resentencing. (R19-23) The State appealed but later voluntarily dismissed the appeal. (R24-25)

In August 2018, the State filed a Motion to Reconsider and Dismiss the Court Order Granting Defendant's Motion to Correct Sentencing Error. The State argued the Florida Supreme Court's opinion in State v. Michel, 257 So. 3d 3 (Fla. 2018), which held

that juvenile offenders sentenced to life with the possibility of parole were not entitled to resentencing, meant that Mr. Morgan was not entitled to resentencing. (R45-48) Mr. Morgan filed a response, arguing several reasons why Mr. Morgan should be resentenced, including the fact that the State waived this issue when it dismissed its appeal of the order. (R49-66)

In November 2018, the trial court agreed with the State and granted the State's motion to reconsider, vacated the order granting resentencing under 3.800, and denying the motion to correct illegal sentence. (R68; R69-72; R7-78; R89-110) A timely notice of appeal was filed. (R79)

SUMMARY OF THE ARGUMENT

The trial court erred in reconsidering an order granting Mr. Morgan's rule 3.800(a) motion. Because the order was a final appealable order and the appeal was abandoned, the trial court lacked jurisdiction to rescind its order. This Court should reverse and remand with instructions to reinstate the order granting Appellant's motion and to resentence him.

ARGUMENTISSUE I

THE TRIAL COURT ERRED IN VACATING AN ORDER GRANTING APPELLANT'S MOTION TO CORRECT ILLEGAL SENTENCE WHERE THE ORDER WAS A FINAL, APPEALABLE ORDER AND THE STATE DISMISSED ITS APPEAL AND THE ORDER HAD BEEN FINAL FOR 18 MONTHS.

Reversible error occurred when the trial court reconsidered an order granting a motion to correct illegal sentence - 18 months after it was granted - and then denying the motion. Because the trial court was not permitted to revisit its earlier ruling, this Court should reverse and remand.

Mr. Morgan moved for resentencing pursuant to section 921.1401, Florida Statutes (2014) based on the Miller v. Alabama, 132 S.Ct. 2455 (2012) and Atwell v. State, 197 So. 3d 1040 (Fla. 2016) decisions. The trial court granted Mr. Morgan's motion in January 2017. The State appealed the order but later voluntarily dismissed its appeal. Because the order granting resentencing was not appealed nor did the State move for rehearing it was a final order. The trial court was not permitted to revisit its ruling on the postconviction motion. See Simmons v. State, No. 1D-191 (Fla. 1st DCA May 16, 2019).

The instant case is identical to Simmons. Simmons was a juvenile who moved to correct his illegal sentence pursuant to

Graham v. Florida, 560 U.S. 48 (2010) and Atwell. The trial court granted the motion and ordered resentencing under chapter 220-2014, Laws of Florida. Id. at *1. But before the resentencing, the court learned of changes in the law which cast doubt on whether Simmons should be resentenced. Id. At the time, the First District had decided Currie v. State, 219 So. 3d 960 (Fla. 1st DCA 2017), holding a juvenile sentence of life with the possibility of parole was not the functional equivalent of a life sentence without the possibility of parole. The Florida Supreme Court would later hold the same in State v. Michel, 257 So. 3d 3 (Fla. 2018) (holding that a juvenile's life sentence with the possibility of parole after twenty-five years' imprisonment was not cruel and unusual punishment). In Simmons, after learning of the new caselaw on the issue, the trial court ordered the parties to address whether his sentence was lawful. Id. at *2. Seven months after granting Simmons' postconviction motion, the court entered an order rescinding its original order and denying the motion. Id.

The First District held "[b]ecause the order granting resentencing became final when neither party moved for rehearing or appealed the order, the trial court had no authority to enter a second order rescinding the original order." Id. "[A]n order on a motion for postconviction relief is final and appealable even when resentencing has not occurred." Id. (citing Slocum v. State, 95

So. 3d 911 (Fla. 1st DCA 2012); Jordan v. State, 81 So. 3d 595 (Fla. 1st DCA 2012); and Taylor v. State, 140 So. 3d 526 (Fla. 2014)). In Taylor, the question presented was "whether an order disposing of a postconviction motion which partially denies and partially grants relief is a final order for purposes of appeal, when the relief granted requires subsequent action in the underlying case, such as resentencing." Taylor, 140 So. 3d at 527. The Florida Supreme Court answered the question in the affirmative, holding that "unlike an order denying a claim in a postconviction motion and granting an evidentiary hearing on a different claim, an order denying relief in part and granting it in part is a final, appealable order because it marks the end of judicial labor on the postconviction motion." Simmons at *2 (citing Taylor, 140 So. 2d at 528-29). The Taylor court held an "order partially denying and partially granting a motion for postconviction relief was a final appealable order, even though resentencing remained to be completed in the underlying case." 140 So. 3d at 529. Moreover, Florida Rule of Criminal Procedure 3.192 also does not authorize the court to reconsider its ruling of 3.800(a) motion. Simmons at *3.

Like Simmons, the trial court in this case was without jurisdiction to revisit its earlier ruling on the postconviction motion. The State did not seek rehearing in this case and it

voluntarily dismissed its appeal, therefore the order remains a final appealable order and should remain in effect. Like the First District did in Simmons, this Court must also follow Taylor. The Appellant respectfully requests this Court reverse and remand with directions to reinstate the order granting Mr. Morgan's rule 3.800(a) motion.

CONCLUSION

Based on the foregoing arguments and authorities, the Appellant respectfully requests this Court reverse and remand with instructions to reinstate the order granting the Appellant's motion and to schedule his resentencing.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this day of May, 2019.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a) (2).

Respectfully submitted,
/s/ Maureen E. Surber

HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

/S/MAUREEN E. SURBER
Assistant Public Defender
Florida Bar Number 0153958
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.org
msurber@pd10.org
kstockman@pd10.org

Ms

IN THE DISTRICT COURT OF APPEAL, SECOND DISTRICT
STATE OF FLORIDA

DARRYL LEN MORGAN,

Appellant,

v.

CASE NO.: 2D18-4940

STATE OF FLORIDA,

Appellee.

/

APPELLEE'S MOTION FOR EXTENSION OF TIME

Appellee, STATE OF FLORIDA, by and through the undersigned Assistant Attorney General, pursuant to Fla. R. App. P. 9.300, hereby moves this Honorable Court for an extension of time in which to file the Answer Brief in the above-styled cause. As grounds therefor, Appellee shows:

1. The Answer to Appellant's Initial Brief is presently due before this Court.
2. The undersigned is charged with the responsibility of responding fully to all aspects of each issue raised by Appellant, and finds, due to an expanding and demanding caseload, there is insufficient time before the present due date to respond appropriately to those issues.
3. The instant motion is made in good faith and not for purposes of delay.
4. This is Appellee's first motion for extension in this matter.

WHEREFORE, Appellee respectfully requests this Honorable Court grant

RECEIVED, 06/26/2019 12:57:50 PM, Clerk, Second District Court of Appeal

its Motion for Extension of Time and allow Appellee an additional thirty (30) days to file its Answer Brief in the above-styled cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 26, 2019, I electronically filed the foregoing with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: Maureen E. Surber, Office of the Public Defender, P.O. Box 9000, Bartow, Florida 33830-9000, appealfilings@pd10.state.fl.us, msurber@pd10.org, and kstockman@pd10.org.

Respectfully submitted,

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COUNSEL FOR APPELLEE

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

June 27, 2019

CASE NO.: 2D18-4940

L.T. No.: 79-3874CFASO

DARRYL LEN MORGAN

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellee's motion for extension of time is granted, and the answer brief shall be served within 30 days from the date of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Ken Burke, Clerk
Attorney General, Tampa

Maureen E. Surber, A.P.D.

Allison C. Heim, A.A.G.

ec



Mary Elizabeth Kuenzel
Clerk



IN THE DISTRICT COURT OF APPEAL, SECOND DISTRICT
STATE OF FLORIDA

DARRYL LEN MORGAN,

Appellant,

v.

CASE NO.: 2D18-4940

STATE OF FLORIDA,

Appellee.

_____/

APPELLEE'S MOTION FOR EXTENSION OF TIME

Appellee, STATE OF FLORIDA, by and through the undersigned Assistant Attorney General, pursuant to Fla. R. App. P. 9.300, hereby moves this Honorable Court for an extension of time in which to file the Answer Brief in the above-styled cause. As grounds therefor, Appellee shows:

1. The Answer to Appellant's Initial Brief is presently due before this Court.
2. The undersigned is charged with the responsibility of responding fully to all aspects of each issue raised by Appellant, and finds, due to an expanding and demanding caseload, there is insufficient time before the present due date to respond appropriately to those issues.
3. The instant motion is made in good faith and not for purposes of delay.

WHEREFORE, Appellee respectfully requests this Honorable Court grant its Motion for Extension of Time and allow Appellee an additional thirty

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(30) days to file its Answer Brief in the above-styled cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 26, 2019, I electronically filed the foregoing with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: Maureen E. Surber, Office of the Public Defender, P.O. Box 9000, Bartow, Florida 33830-9000, appealfilings@pd10.state.fl.us, msurber@pd10.org, and kstockman@pd10.org.

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COUNSEL FOR APPELLEE

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

July 29, 2019

CASE NO.: 2D18-4940

L.T. No.: 79-3874CFASO

DARRYL LEN MORGAN

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellee's motion for extension of time is granted, and the answer brief shall be served within 30 days from the date of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Ken Burke, Clerk
Attorney General, Tampa

Maureen E. Surber, A.P.D.

Allison C. Heim, A.A.G.

ec

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DARRYL LEN MORGAN,

Appellant,

v.

Case No. 2D18-4940

L.T. Case No. 79-3874CFASO

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellee acknowledges Appellant's statement of the case and facts and includes the following additions, clarifications, and/or corrections: Appellant was 16 years old when he was indicted for first degree murder on June 27, 1979 for the beating and murder of his neighbor's four-year-old son. [R. 7-8, 45, 121]. Appellant pleaded nolo contendere to second degree murder on December 3, 1979 and was sentenced to life with the possibility of parole. [R. 19, 45].

On September 19, 2016, Appellant filed a motion to correct illegal sentence under Rule 3.800(a), arguing he was entitled to resentencing pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and its progeny, including *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016). [R. 19-20]. The lower court granted Appellant's motion on January 3, 2017. [R. 22]. The State filed a Notice of Appeal of the lower court's order granting Appellant's Rule 3.800(a) motion on January 12, 2017 under Case Number 2D17-0239. [R. 24]. On March 20, 2017, this Court dismissed the appeal based on the State's notice of voluntary dismissal. [R. 25].

About a year and a half later, on August 16, 2018, the State moved the lower court to reconsider its order granting Appellant's motion to correct illegal sentence, arguing *Atwell* had been overturned and those in Appellant's circumstances were not entitled to resentencing. [R. 45-8]. The lower court agreed and vacated its order granting Appellant's motion to correct illegal sentencing. [R. 69-72].

SUMMARY OF THE ARGUMENT

Appellant argues the lower court erred in vacating its order granting Appellant's motion to correct illegal sentencing. Specifically, Appellant argues error because the order granting his motion was a final order, which the State abandoned on appeal and which the lower court no longer had jurisdiction to reconsider.

However, the trial court's order was not final and appealable by the State as the State is statutorily limited to what it may appeal. Further, the trial court's original order granting resentencing was based on *Atwell v. State*, which did not properly apply United States Supreme Court precedent. As such, it was proper for the trial judge to consider subsequent Florida Supreme Court case law, including in deciding whether to conduct a resentencing hearing.

Under current decisional law, a juvenile sentence of life with parole, or with a review, is not illegal; thus, any obsolete trial court orders issued pursuant to *Atwell* under 3.800 or 3.850 are now invalid. There is no longer a jurisdictional basis for a trial court to disturb a life with parole sentence, nor to conduct a resentencing.

ARGUMENT

ISSUE I

WHETHER THE LOWER COURT ERRED IN VACATING ITS ORDER GRANTING APPELLANT'S MOTION TO CORRECT ILLEGAL SENTENCE. [RESTATED].

I. Introduction

Appellant argues the lower court erred in reconsidering and vacating its order granting Appellant's motion to correct an illegal sentence because the trial court was not permitted to revisit its earlier ruling. However, Appellant has not suffered a manifest injustice by the trial court's decision because his sentence does not exceed that of similarly situated defendants. Appellant is not entitled to relief under *Graham* or its progeny because he has a meaningful opportunity for release incorporated into his current sentence in the form of parole eligibility.

II. Standard of Review

The standard of review for a trial court's decision on a postconviction motion is de novo. *Williams v. State*, 197 So. 3d 569, 571 (Fla. 2d DCA 2016) (citing *Clough v. State*, 136 So. 3d 680, 681 (Fla. 2d DCA 2014)); see *Correll v. State*, 184 So. 3d 478 (Fla. 2015) (employing the de novo standard of review with constitutional issues in a postconviction proceeding).

Whether the defendant is entitled to a resentencing hearing hinges on the legality of his initial sentence. The standard of review for the legality of a criminal

sentence is de novo. *Clowers v. State*, 31 So. 3d 962, 966 (Fla. 1st DCA 2010). The application of the law of the case doctrine is reviewed de novo. *Transamerica Leasing, Inc. v. Inst. of London Underwriters*, 430 F. 3d 1326, 1331 (11th Cir. 2005) (citing *Alphamed, Inc. v. B. Braun Med., Inc.*, 367 F. 3d 1280, 1285 (11th Cir. 2004)).

III. Burden of Persuasion

Appellant bears the burden of demonstrating prejudicial error. Section 924.051(7), Fla. Stat. (2016), provides, “In a direct appeal...the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court.” A trial court’s decision has the “presumption of correctness and the burden is on Appellant to demonstrate error.” *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Because the trial court’s decision is presumed to be correct, “the appellee can present any argument supported by the record even if not expressly asserted in the lower court.” *Dade County School Bd. v. Radio Station WQBA*, 731 So.2d 638, 645 (Fla. 1999); *See Robertson v. State*, 829 So. 2d 901, 906-907 (Fla. 2002).

IV. Merits

A. Finality

Appellant’s resentencing was never “final” and appealable by the State. “The state’s right of appeal in criminal cases depends on statutory authorization

and is governed strictly by statute.” *State v. Fudge*, 645 So. 2d 23, 24 (Fla. 2d DCA 1994) (citing *State v. Creighton*, 469 So. 2d 735, 740 (Fla.1985); and § 924.07, Fla. Stat.). Therefore, the State did not “abandon” an appeal of the trial court’s initial order granting a resentencing.

Although there was an order granting resentencing, the resentencing never actually occurred. Thus, at the time the trial judge rescinded its original order and denied resentencing, finality had not attached. Because the resentencing did not occur, the judge had to apply the current law, namely *State v. Michel*, 257 So. 3d 3, 6 (Fla. 2018), *reh'g denied*, No. SC16-2187, 2018 WL 6729935 (Fla. Oct. 24, 2018), *and cert. denied sub nom. Michel v. Fla.*, 139 S. Ct. 1401, 203 L. Ed. 2d 630 (2019). The trial court’s original order granting resentencing was based on *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), which did not properly apply United States Supreme Court precedent. *See Virginia v. LeBlanc*, 137 S. Ct. 1726, 198 L. Ed. 2d 186, *reh'g denied*, 138 S. Ct. 35, 198 L. Ed. 2d 762 (2017).

As such, it was proper for the trial judge to consider subsequent Florida Supreme Court case law, including *Michel* and now *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018), in deciding whether to conduct a resentencing hearing. In short, Morgan has no finality interest before a resentencing has occurred. The resentencing proceeding was not over until after the window for the State to appeal had closed after the new resentencing. Morgan now seeks “finality” in what

amounts to an interim, procedural decision to resentence him; however, the trial court's order (ordering resentencing under *Atwell*) was only the first step in the resentencing process.

In another sense, the original trial court order effectively re-opened Morgan's pipeline while he was awaiting resentencing. The sentence was not final and the case was still "pending." While the case was pending resentencing, *Franklin* was issued, rendering the resentencing hearing unnecessary. Morgan has no "finality" interest in a resentencing which was never conducted because it was ordered but not yet finished. His new sentence would not have been "final" until it was imposed and then affirmed on appeal, or the window to appeal had closed. *See, e.g., Sanders v. State*, 946 So. 2d 953, 959 (Fla. 2006) ("We have emphasized that once a conviction has been affirmed on direct appeal 'a presumption of finality and legality attaches to the conviction and sentence.'").

The *Trotter* and *Morales* cases establish it would be a manifest injustice to apply obsolete case law, such as *Atwell*, in juvenile resentencing cases, because there has been subsequent clarification by the Florida Supreme Court in *Franklin*. *See Franklin*, 258 So. 3d 1239; *Trotter v. State*, 690 So. 2d 1234, 1237 (Fla. 1997); *Morales v. State*, 580 So. 2d 788, 788 (Fla. 3d DCA 1991). In *Trotter*, the court made clear that an intervening rule updating the law can be an exception to res judicata if applying obsolete law would result in "manifest injustice to the people

of Florida by perpetuating an anomalous and incorrect application of the capital sentencing statute.” *Trotter, supra*. Just so in this case: *Franklin* was an update or clarification of the law on capital sentencing, so application of the obsolete *Atwell* would result in manifest injustice to the State and people of Florida in conducting unnecessary and undeserved resentencing hearings.

Likewise, even if Defendant had to be resentenced, “the decisional law effective at the time of the resentencing applies.” *State v. Fleming*, 61 So. 3d 399, 400 (Fla. 2011). Unless the law changes before resentencing, the current decisional law holds the Eighth Amendment is not violated when a defendant sentenced for a nonhomicide offense committed as a juvenile has an opportunity for parole. *See Franklin*, 258 So.3d at 1241.

B. Jurisdiction

The trial court lacks jurisdiction to conduct a resentencing where the sentence is no longer illegal under *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018), *reh’g denied*, No. SC14-1442, 2018 WL 7137777 (Fla. Dec. 4, 2018), *and cert. denied sub nom. Franklin v. Fla.*, 139 S. Ct. 2646, 204 L. Ed. 2d 291 (2019). *Franklin* effectively destroys all jurisdiction for a trial court to conduct any *Atwell* resentencing, as the sentence is no longer illegal. When *Atwell* was good law, Rules 3.800 or 3.850 could create jurisdiction for a trial court to correct and vacate an illegal sentence and conduct a resentencing because *Atwell* held certain

sentences were illegal.

However, once *Franklin* was issued, *Atwell* became obsolete, and *Franklin* eliminated the entire substantive basis for allowing trial courts to exercise jurisdiction over old juvenile homicide cases, which would otherwise be final (specifically, the *Atwell* basis in jurisdiction was that the sentence was illegal under *Miller v. Alabama*, 132 S. Ct. 2455 (2012); this was overruled in *Franklin*, which held a sentence of life with parole was legal under *Miller*).

Under current decisional law, a juvenile sentence of life with parole (or a review) is not illegal under *Miller* and *Franklin*. Thus, any obsolete trial court orders, or even Mandates, floating around, which were issued pursuant to *Atwell* under 3.800 or 3.850 are now invalid. There is no longer a jurisdictional basis for a trial court to disturb a life with parole sentence, nor to conduct a resentencing. Any pending order to resentence a defendant must now give way to *Franklin*, which eliminated the illegality of the prior sentence by overruling *Atwell*, and in so doing also eliminated any jurisdiction to modify the sentence.

There is simply no authority for the trial court to modify a legal sentence, nor to conduct a resentencing in light of *Franklin*. See, e.g., *Gulfstream Micro Sys., Inc. v. Kingsbridge Boca Associates*, 564 So. 2d 554 (Fla. 4th DCA 1990) (trial court lacked jurisdiction to correct substantive error in judgment; oral motion to amend judgment was made 15 months after judgment and there was nothing in

original motion to correct clerical error to indicate that appellee was seeking to correct substantive error). Here, there is no longer any substantive illegality in the sentence, thus there is no jurisdiction to resentence.

Here, any resentencing would be “without jurisdiction” and essentially “illegal,” or extra-legal, as it would violate *Franklin*’s holding that the sentence is legal; therefore, resentencing is unnecessary. There is no longer an inherent illegality in Morgan’s sentence which needs to be corrected. Thus, there is no jurisdictional basis for the trial court to conduct a resentencing hearing, and this court must 1) affirm the trial court’s order denying resentencing in this case, and 2) in similar cases in the future, grant Certiorari to the State in any case in which the trial judge ignores *Franklin* and attempts to resentence a defendant under the obsolete case of *Atwell*. This court should deny Appellant’s request for relief and should consider issuing a short opinion consistent with the above, to give guidance to trial courts.

CONCLUSION

Appellee respectfully concedes this issue in accordance with the above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2019, I electronically filed the foregoing with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: Maureen Surber, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831, appealfilings@pd10.org, msurber@pd10.org, kstockman@pd10.org.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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COUNSEL FOR APPELLEE

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DARRYL LEN MORGAN, :
Appellant, :
vs. : Case No. 2D18-4940
STATE OF FLORIDA, :
Appellee. :
_____ :

NOTICE OF SUPPLEMENTAL AUTHORITY

Appellant, DARRYL LEN MORGAN, hereby gives notice of intent to rely on the following authority in support of the arguments made in the above-styled case.

1. Wehr v. State, No. 5D19-147 (Fla. 5th DCA Sept. 20, 2019);
2. Jones v. State, No. 4D18-3589 (Fla. 4th DCA Sept. 18, 2019).

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 17th day of October, 2019.

Respectfully submitted,

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2019 WL 4548152

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IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Fifth District.

Steven D. WEHR, Appellant,

v.

STATE of Florida, Appellee.

Case No. 5D19-147

|

Opinion filed September 20, 2019

3.850 Appeal from the Circuit Court for Volusia County,
Kathryn D. Weston, Judge.

Attorneys and Law Firms

James S. Purdy, Public Defender, and Nancy Ryan, Assistant
Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Pamela
J. Koller, Assistant Attorney General, Daytona Beach, for
Appellee.

ON CONCESSION OF ERROR

PER CURIAM.

*1 Based on the State's concession of error, we reverse the postconviction court's rescission of the original resentencing order and the denial of Appellant's motion for postconviction relief. See Simmons v. State, 274 So.3d 468, 470 (Fla. 1st DCA 2019) (holding that the order granting resentencing became final when neither party moved for rehearing or appealed the order, and, therefore, the postconviction court lacked authority to enter a subsequent order rescinding the original resentencing order). We quash the order on appeal and remand with directions for the postconviction court to reinstate the order granting Appellant's postconviction motion and to conduct a resentencing hearing.

REVERSED and REMANDED.

HARRIS, GROSSHANS and SASSO, JJ., concur.

All Citations

--- So.3d ----, 2019 WL 4548152 (Mem)

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NOTICE: THIS OPINION HAS NOT BEEN
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IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Fourth District.

Anthony Jerome JONES, Appellant,

v.

STATE of Florida, Appellee.

No. 4D18-3589

|

[September 18, 2019]

Synopsis

Background: Defendant, who was convicted for first-degree felony murder that he committed while juvenile, moved for resentencing. The Circuit Court, 19th Judicial Circuit, St. Lucie County, Dan L. Vaughn, J., resentenced defendant, but, on state's objection, vacated defendant's prior resentencing order and denied his motion for postconviction relief. Defendant appealed.

The District Court of Appeal held that trial court lacked jurisdiction to vacate defendant's resentencing order.

Reversed and remanded.

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Dan L. Vaughn, Judge; L.T. Case No. 561990CF002729A.

Attorneys and Law Firms

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Ashley Moody, Attorney General, Tallahassee, and Matthew Steven Ocksrider, Assistant Attorney General, West Palm Beach, for Appellee.

Opinion

Per Curiam.

*1 Anthony Jerome Jones appeals a trial court's order that vacated a prior resentencing order and denied his motion for postconviction relief. We reverse and remand because the trial court lacked jurisdiction to vacate the resentencing order. *See Taylor v. State*, 140 So. 3d 526 (Fla. 2014); *Simmons v. State*, 274 So.3d 468 (Fla. 1st DCA 2019).

Jones was sentenced in 1992 for first-degree felony murder that he committed while a juvenile. In 1994, the trial court resentenced him to include the possibility for parole.

In 2017, Jones moved for resentencing based on *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), and its interpretation of the United States Supreme Court's *Graham/Miller* progeny. *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (holding that it was a violation of the Eighth Amendment to sentence a juvenile to life imprisonment without the possibility of parole for a nonhomicide offense); *Miller v. Alabama*, 567 U.S. 460, 479, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (extending *Graham's* reasoning to juveniles sentenced to a mandatory term of life without parole for a homicide offense).

The trial court entered the initial resentencing order because *Atwell* held as unconstitutional a juvenile homicide offender's mandatory life sentence despite the possibility of parole. *Atwell* reasoned that Florida's parole system failed to provide for individual consideration of a juvenile's maturity and rehabilitation. *Atwell*, 197 So. 3d at 1048-50. The State did not appeal, seek rehearing, or move to stay that resentencing order. Rather, more than a year later, the State objected to the resentencing based on changes in the law holding that a life sentence with eligibility for parole after twenty-five years does not offend *Miller* or *Graham*. *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018); *State v. Michel*, 257 So. 3d 3 (Fla. 2018), *cert. denied*, — U.S. —, 139 S. Ct. 1401, 203 L. Ed.2d 630 (2019). The trial court agreed, vacated its initial resentencing order, and denied Jones' motion for post-conviction relief.

The First District recently quashed a comparable order concluding that the trial court lacked jurisdiction to rescind its first "final" resentencing order. *Simmons*, 274 So.3d at 470-72. The order granting resentencing became final when neither party moved for rehearing or appealed that order. *Id.* at 470-71 (citing *Taylor*, 140 So. 3d at 528-29; *Slocum v. State*,

95 So. 3d 911, 912 (Fla. 1st DCA 2012); *Jordan v. State*, 81 So. 3d 595, 596 (Fla. 1st DCA 2012)).

We agree and quash the order on appeal, and remand with directions that the trial court reinstate the order granting resentencing. As outlined in *Simmons*, the trial court should then resentence Jones to a lawful sentence. *Id.* at 472. Moreover, as Judge Bilbrey recognized in his concurring opinion in *Simmons*, the “decisional law effective at the time of the resentencing applies.” *Id.* (quoting *State v. Fleming*, 61 So. 3d 399, 400 (Fla. 2011));¹ see also *Bellay v. State*, No. 4D17-3866, — So.3d —, 2019 WL 2998536 (Fla. 4th DCA July 10, 2019) (re-imposing life sentence pursuant to *Atwell* resentencing). While Jones presents substantive

challenges to the current decisional law, we decline to consider those arguments.

¹ Judge Bilbrey added his view that the trial court could legally impose the same sentence. *Id.*

***2** *Reversed and remanded.*

Warner, Klingensmith and Kuntz, JJ., concur.

All Citations

--- So.3d ----, 2019 WL 4458745

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DARRYL LEN MORGAN,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D18-4940
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed April 3, 2020.

Appeal from the Circuit Court for Pinellas
County; William H. Burgess, III, Judge.

Howard L. Dimmig, II, Public Defender,
and Maureen E. Surber, Assistant Public
Defender, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Allison C. Heim,
Assistant Attorney General, Tampa, for
Appellee.

BLACK, Judge.

Darryl Morgan challenges the postconviction court's order denying his
motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal

Procedure 3.800(a). In the order on appeal, the postconviction court vacated a previous order in which it had granted Morgan's motion and ordered resentencing. At the time that the postconviction court reconsidered Morgan's motion, Morgan's resentencing had not occurred and a change in the law clarified that Morgan's initial sentence was not illegal. Morgan contends that the postconviction court did not have jurisdiction to reconsider its previous order and that we must reverse the order denying his motion and remand for reinstatement of the previous order directing resentencing. We disagree and affirm the order on appeal.

Morgan was a juvenile in 1979 when he was convicted of murder in the second degree and sentenced to life in prison with the possibility of parole after twenty-five years. In September 2016, Morgan filed a rule 3.800(a) motion arguing that he was entitled to resentencing pursuant to Miller v. Alabama, 567 U.S. 460 (2012), and Atwell v. State, 197 So. 3d 1040 (Fla. 2016). On January 3, 2017, the postconviction court granted Morgan's motion, ruling that his life sentence was illegal and that he was therefore entitled to be resentenced. The State then filed a notice of appeal but voluntarily dismissed the appeal before it was perfected.

More than a year after the postconviction court had granted Morgan's motion, Morgan still had not been resentenced. His resentencing had been rescheduled multiple times at his request, and it was finally to occur on August 17, 2018. On August 16, 2018, the State filed a motion for reconsideration of the order granting Morgan's rule 3.800(a) motion. The State premised its motion on the argument that Atwell had been receded from in State v. Michel, 257 So. 3d 3 (Fla. 2018), and that therefore Morgan was not in the class of defendants entitled to resentencing pursuant to

Miller. Morgan's resentencing was again continued, and after a hearing on the State's motion for reconsideration, the court granted the motion, vacated its previous order, and denied Morgan's rule 3.800(a) motion. The order on appeal was rendered November 30, 2018, more than a year and a half after the initial order granting Morgan's motion had been entered.

Morgan contends that the initial postconviction order granting his motion was a final appealable order and that the State's dismissal of its appeal coupled with the lapse of time in filing the motion for reconsideration rendered the postconviction court without jurisdiction to reconsider its prior ruling and order. Morgan finds support in Simmons v. State, 274 So. 3d 468 (Fla. 1st DCA 2019). Like Morgan, Simmons was a juvenile sentenced to life in prison who filed a rule 3.800(a) motion seeking resentencing based on Miller and Graham v. Florida, 560 U.S. 48 (2010). The postconviction court granted Simmons' motion and ordered resentencing. However, before Simmons could be resentenced the postconviction court learned of changes in the law with regard to juvenile sentencing. And "[s]even months after granting Simmons' postconviction motion, the court entered an order rescinding its original order and denying the motion." Simmons, 274 So. 3d at 470. Simmons appealed from that order, and the First District concluded that "[b]ecause the order granting resentencing became final when neither party moved for rehearing or appealed the order, the trial court had no authority to enter a second order rescinding the original order." Id. The First District stated that it "ha[d] twice held that an order on a motion for postconviction relief is final and appealable even when resentencing has not occurred," citing Slocum v. State, 95 So. 3d 911 (Fla. 1st DCA 2012), and Jordan v. State, 81 So. 3d 595 (Fla.

1st DCA 2012), and that "the supreme court has agreed," citing Taylor v. State, 140 So. 3d 526 (Fla. 2014). Simmons, 274 So. 3d at 470.

In Jordan, the First District "addressed for the first time whether a postconviction order granting resentencing is final when resentencing has not yet occurred." Simmons, 274 So. 3d at 470-71. On appeal from an order denying Jordan's rule 3.800(a) motion following the State's motion for reconsideration of the initial order granting Jordan's motion, the First District held that the initial order granting resentencing was final "because it brought the postconviction proceedings to an end" and that the postconviction court lacked jurisdiction to reconsider it where the State's motion was untimely. Jordan, 81 So. 3d at 596.¹ Jordan relied upon State v. White, 470 So. 2d 1377 (Fla. 1985), which addressed rule 3.850 and writs of coram nobis and habeas corpus.

Like the supreme court's White decision, the Taylor decision relied upon by the First District arose in the context of a rule 3.850 motion for postconviction relief. There, the supreme court held "that an order disposing of a postconviction motion which partially denies and partially grants relief is a final order for purposes of appeal, even if the relief granted requires subsequent action in the underlying case, such as resentencing." 140 So. 3d at 528. The court went on to hold that its conclusion was "consistent with [the] recent amendments to Florida Rule of Criminal Procedure 3.850, effective July 1, 2013, which added subsection (f)(8)(C), stating that '[t]he order issued

¹Unlike Jordan and Simmons, Slocum addressed the timeliness of an appeal from an order denying in part a motion for postconviction relief filed pursuant to rule 3.850 as it related to attacks on Slocum's convictions and granting the motion as it related to Slocum's sentences. Slocum, 95 So. 3d at 912.

after the evidentiary hearing shall resolve all the claims raised in the motion and shall be considered the final order for purposes of appeal.' " Id. at 529 (second alteration in original) (quoting In re Amendments to the Fla. Rules of Criminal Procedure & the Fla. Rules of Appellate Procedure, 132 So. 3d 734, 750 (Fla. 2013)). Unlike rule 3.850, rule 3.800 does not state that an order resolving "all the claims raised in the motion" shall be a final order.

We note that subsequent to the issuance of Simmons, and in reliance on it, the Fourth District issued Jones v. State, 279 So. 3d 172 (Fla. 4th DCA 2019). The Fifth District has also followed Simmons. See Magill v. State, 287 So. 3d 1262 (Fla. 5th DCA 2019). But see Maysonet v. State, 722 So. 2d 230, 231 (Fla. 5th DCA 1998) (dismissing appeal from order granting in part and denying in part rule 3.800(a) motion where resentencing had not occurred and concluding that "there is additional judicial labor that will occur").

This court has held that a "rule 3.800(a) motion d[oes] not create a new, separate proceeding. Instead, it is a motion filed in continuation of the original criminal proceeding." State v. Rudolf, 821 So. 2d 385, 386 (Fla. 2d DCA 2002); see also Stewart v. State, 647 So. 2d 219, 220 (Fla. 2d DCA 1994) (dismissing appeal from order denying in part and granting in part rule 3.800(a) motion where resentencing had not yet occurred and concluding that "it is clear that the trial court's judicial labor has not yet ended because [the appellant] has not been resentenced . . . and . . . only after the [postconviction] court resentsences [the appellant] will we have the jurisdiction to determine whether the 'final and irreparable effect' of any new sentence violates his right to the imposition of a legal sentence" (footnote omitted)). We have further held

that an order granting a rule 3.800(a) motion "is essentially a nonfinal order entered after the entry of an appealable final order" and "that Florida Rule of Appellate Procedure 9.130(a)(4), permitting appeals of nonfinal orders entered after final orders, does not apply in this criminal context." Rudolf, 821 So. 2d at 386. "To the extent that section 924.066(2) . . . seeks to confer jurisdiction for district courts to review adverse rulings granting or denying collateral or postconviction relief, that statute can apply constitutionally only to final orders." Id. Rudolf agreed with State v. Delvalle, 745 So. 2d 541, 542 (Fla. 4th DCA 1999):

[W]hile the trial court has granted the Defendant's 3.800(a) motion, it has not and will not grant the Defendant any collateral relief until it resentences him. The order granting the Defendant's 3.800(a) motion is not a final order, as judicial labor, i.e., resentencing, is still required. Until the Defendant is resentenced, this Court cannot properly determine whether the trial court has erred. Accordingly, the State's appeal is dismissed without prejudice to the State to timely appeal the resentencing order.

The Third District has likewise held that in the context of a rule 3.800 motion "judicial labor is not completed until the defendant is resentenced," such that "[t]he time for appeal d[oes] not begin to run until the resentencing order [i]s entered." State v. Huerta, 38 So. 3d 883, 884-85 (Fla. 3d DCA 2010); see also Adams v. State, 949 So. 2d 1125, 1126 (Fla. 3d DCA 2007).

The conclusions in Rudolf, Huerta, and Delvalle are supported by the language of rule 9.140(c)(1), listing the orders that the State may appeal to include orders "granting relief under Florida Rules of Criminal Procedure 3.801, 3.850, 3.851, or 3.853." Fla. R. App. P. 9.140(c)(1)(J). Notably absent is the right to appeal from a rule 3.800(a) order. "The Florida Supreme Court has explained that 'the State's right to

appeal an adverse ruling is a limited one that is strictly governed by statute, rule and overriding constitutional principles.' The State's right to appeal in criminal cases should be construed narrowly." State v. Knight, 931 So. 2d 254, 255 (Fla. 2d DCA 2006) (quoting State v. Gaines, 770 So. 2d 1221, 1227 n.8 (Fla. 2000)). Rule 9.140 also permits the State to appeal from orders "imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines; . . . imposing a sentence outside the range recommended by the sentencing guidelines; . . . or as otherwise provided by general law for final orders." Fla. R. App. P. 9.140(c)(1)(M), (N), (P). The rule clearly contemplates that the State may appeal from a rule 3.800(a) order after resentencing where the sentence is unlawful, illegal, or outside the range of the guidelines. And the provision permitting appeals "as otherwise provided by general law for final orders" is inapplicable to pre-resentencing orders on rule 3.800(a) motions under this court's analysis in Rudolf.

The supreme court's Taylor opinion does not indicate that Rudolf, Huerta, and Delvalle are no longer good law; in fact, despite being cited in the Fifth District opinion quashed by Taylor, Taylor did not cite or address the Rudolf or Huerta opinions. Compare Taylor, 140 So. 3d at 527-29, with Taylor v. State, 96 So. 3d 989, 992 (Fla. 5th DCA 2012). Nonetheless, it appears that at least the Fourth District has determined that Delvalle is no longer good law in light of Taylor because it has recently relied upon Simmons and held that with regard to a rule 3.800(a) motion an "order granting resentencing became final and non-appealable when neither party moved for rehearing or appealed. After that, the circuit court lacked jurisdiction to vacate that order." German v. State, 284 So. 3d 572, 573 (Fla. 4th DCA 2019) (addressing a rule 3.800(a)

motion and order); see also State v. West, 262 So. 3d 818, 819 (Fla. 4th DCA) ("The State appeals an order granting the defendant's motion to correct an illegal sentence. We reverse."), review denied, No. SC19-236, 2019 WL 2428452 (Fla. June 11, 2019).

We recognize that Taylor states that "postconviction proceedings and resentencing proceedings are separate, legally discrete proceedings," Taylor, 140 So. 3d at 529, but we find it distinguishable and not controlling over the issue presented in this case. We also do not believe that Taylor implicitly overruled Rudolf, Huerta, and Delvalle despite its broad references to "postconviction orders" and resentencing. Taylor addressed rule 3.850 collateral attacks on convictions rather than only illegal sentences under rule 3.800(a). We further note that, although it predates Taylor, the supreme court in State v. Gaines, 770 So. 2d 1221, 1224 (Fla. 2000), cited Delvalle for its holding that rule 3.800(a) orders granting relief are not final appealable orders where "judicial labor, i.e., resentencing, is still required." See also Farina v. State, 191 So. 3d 454, 459 (Fla. 2016) (Canady, J., dissenting) (citing Delvalle for same).

Under Rudolf, the State could not appeal the order granting Morgan's rule 3.800(a) motion until resentencing had occurred. Thus, the postconviction court retained jurisdiction over the case. Moreover, the order granting the motion was a nonfinal order, and courts may reconsider their interlocutory, nonfinal orders at any time they have jurisdiction and before a final judgment or order has been rendered. Here, the court was within its authority to reconsider its ruling on Morgan's motion until a final order—after resentencing—had been rendered. See Fla. R. Crim. P. 3.192 ("Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case."); see also Silvestrone v. Edell, 721

So. 2d 1173, 1175 (Fla. 1998) ("[T]he trial court retains inherent authority to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action"); Taufer v. Wells Fargo Bank, N.A., 278 So. 3d 335, 336-37 (Fla. 3d DCA 2019) ("Motions for reconsideration apply to 'nonfinal, interlocutory orders, and are based on a trial court's 'inherent authority to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action" (quoting Seigler v. Bell, 148 So. 3d 473, 478-79 (Fla. 5th DCA 2014))).²

We affirm the order denying Morgan's rule 3.800(a) motion upon reconsideration based on the motion filed by the State. Under Rudolf, the State could not appeal until resentencing had occurred and a final order rendered. We continue to hold that an order granting a rule 3.800(a) motion is not a final appealable order. Thus, the postconviction court had jurisdiction at the time the State sought reconsideration of the ruling; the ruling was an interlocutory order which the court had inherent authority to reconsider upon request by a party. And at the time of the request for reconsideration, the law had changed such that Morgan was not entitled to the resentencing originally granted and therefore the motion to correct illegal sentence was properly denied.

²We note that the First District concluded that "[b]ecause Simmons sought postconviction relief under rule 3.800(a), rule 3.192 did not authorize the postconviction court to reconsider its earlier ruling." Simmons, 274 So. 3d at 471-72. The rehearing provisions of rule 3.192 clearly do not apply to postconviction proceedings: "This rule shall not apply to postconviction proceedings pursuant to rule 3.800(a), 3.801, 3.850, 3.851, or 3.853." Fla. R. Crim. P. 3.192. However, the final statement of the rule, addressing reconsideration of interlocutory rulings, refers to "inherent authority" and further states that nothing in the rule—including its inapplicability to postconviction proceedings—is an exception to the court's inherent authority: "Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case." Id.

Morgan does not dispute that the law as it currently stands does not permit resentencing for defendants like Morgan who received life sentences with the possibility of parole. See Franklin v. State, 258 So. 3d 1239, 1241 (Fla. 2018) ("Florida's statutory parole process fulfills Graham's requirement that juveniles be given a 'meaningful opportunity' to be considered for release during their natural life based upon 'normal parole factors,' as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review." (citations omitted)), cert. denied, Franklin v. Florida, 139 S. Ct. 2646 (2019). We therefore certify conflict with Jordan, Simmons, Jones, Magill, and the cases which rely upon them to conclude that orders granting rule 3.800 motions are appealable by the State prior to resentencing and that where no appeal is taken the trial court loses jurisdiction to reconsider its ruling.

Affirmed; conflict certified.

VILLANTI and ROTHSTEIN-YOUAKIM, JJ., Concur.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DARRYL LEN MORGAN,	:	
Appellant, Petitioner,	:	
vs.	:	Case No. 2D18-4940
STATE OF FLORIDA,	:	
Appellee, Respondent.	:	
_____	:	

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

Notice is hereby given that the Petitioner, DARRYL LEN MORGAN, invokes the discretionary jurisdiction of the Supreme Court of Florida to review the decision of this court rendered on April 3, 2020. The decision certifies direct conflict with another district court. See Fla. R. App. P. 9.030(a)(2)(A)(vi).

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 4th day of May, 2020.

Respectfully submitted,

/s/ Maureen E. Surber

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

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OF FLORIDA
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Procedure 3.800(a). In the order on appeal, the postconviction court vacated a previous order in which it had granted Morgan's motion and ordered resentencing. At the time that the postconviction court reconsidered Morgan's motion, Morgan's resentencing had not occurred and a change in the law clarified that Morgan's initial sentence was not illegal. Morgan contends that the postconviction court did not have jurisdiction to reconsider its previous order and that we must reverse the order denying his motion and remand for reinstatement of the previous order directing resentencing. We disagree and affirm the order on appeal.

Morgan was a juvenile in 1979 when he was convicted of murder in the second degree and sentenced to life in prison with the possibility of parole after twenty-five years. In September 2016, Morgan filed a rule 3.800(a) motion arguing that he was entitled to resentencing pursuant to Miller v. Alabama, 567 U.S. 460 (2012), and Atwell v. State, 197 So. 3d 1040 (Fla. 2016). On January 3, 2017, the postconviction court granted Morgan's motion, ruling that his life sentence was illegal and that he was therefore entitled to be resentenced. The State then filed a notice of appeal but voluntarily dismissed the appeal before it was perfected.

More than a year after the postconviction court had granted Morgan's motion, Morgan still had not been resentenced. His resentencing had been rescheduled multiple times at his request, and it was finally to occur on August 17, 2018. On August 16, 2018, the State filed a motion for reconsideration of the order granting Morgan's rule 3.800(a) motion. The State premised its motion on the argument that Atwell had been receded from in State v. Michel, 257 So. 3d 3 (Fla. 2018), and that therefore Morgan was not in the class of defendants entitled to resentencing pursuant to

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We note that subsequent to the issuance of Simmons, and in reliance on it, the Fourth District issued Jones v. State, 279 So. 3d 172 (Fla. 4th DCA 2019). The Fifth District has also followed Simmons. See Magill v. State, 287 So. 3d 1262 (Fla. 5th DCA 2019). But see Maysonet v. State, 722 So. 2d 230, 231 (Fla. 5th DCA 1998) (dismissing appeal from order granting in part and denying in part rule 3.800(a) motion where resentencing had not occurred and concluding that "there is additional judicial labor that will occur").

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that an order granting a rule 3.800(a) motion "is essentially a nonfinal order entered after the entry of an appealable final order" and "that Florida Rule of Appellate Procedure 9.130(a)(4), permitting appeals of nonfinal orders entered after final orders, does not apply in this criminal context." Rudolf, 821 So. 2d at 386. "To the extent that section 924.066(2) . . . seeks to confer jurisdiction for district courts to review adverse rulings granting or denying collateral or postconviction relief, that statute can apply constitutionally only to final orders." Id. Rudolf agreed with State v. Delvalle, 745 So. 2d 541, 542 (Fla. 4th DCA 1999):

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The supreme court's Taylor opinion does not indicate that Rudolf, Huerta, and Delvalle are no longer good law; in fact, despite being cited in the Fifth District opinion quashed by Taylor, Taylor did not cite or address the Rudolf or Huerta opinions. Compare Taylor, 140 So. 3d at 527-29, with Taylor v. State, 96 So. 3d 989, 992 (Fla. 5th DCA 2012). Nonetheless, it appears that at least the Fourth District has determined that Delvalle is no longer good law in light of Taylor because it has recently relied upon Simmons and held that with regard to a rule 3.800(a) motion an "order granting resentencing became final and non-appealable when neither party moved for rehearing or appealed. After that, the circuit court lacked jurisdiction to vacate that order." German v. State, 284 So. 3d 572, 573 (Fla. 4th DCA 2019) (addressing a rule 3.800(a)

motion and order); see also State v. West, 262 So. 3d 818, 819 (Fla. 4th DCA) ("The State appeals an order granting the defendant's motion to correct an illegal sentence. We reverse."), review denied, No. SC19-236, 2019 WL 2428452 (Fla. June 11, 2019).

We recognize that Taylor states that "postconviction proceedings and resentencing proceedings are separate, legally discrete proceedings," Taylor, 140 So. 3d at 529, but we find it distinguishable and not controlling over the issue presented in this case. We also do not believe that Taylor implicitly overruled Rudolf, Huerta, and Delvalle despite its broad references to "postconviction orders" and resentencing. Taylor addressed rule 3.850 collateral attacks on convictions rather than only illegal sentences under rule 3.800(a). We further note that, although it predates Taylor, the supreme court in State v. Gaines, 770 So. 2d 1221, 1224 (Fla. 2000), cited Delvalle for its holding that rule 3.800(a) orders granting relief are not final appealable orders where "judicial labor, i.e., resentencing, is still required." See also Farina v. State, 191 So. 3d 454, 459 (Fla. 2016) (Canady, J., dissenting) (citing Delvalle for same).

Under Rudolf, the State could not appeal the order granting Morgan's rule 3.800(a) motion until resentencing had occurred. Thus, the postconviction court retained jurisdiction over the case. Moreover, the order granting the motion was a nonfinal order, and courts may reconsider their interlocutory, nonfinal orders at any time they have jurisdiction and before a final judgment or order has been rendered. Here, the court was within its authority to reconsider its ruling on Morgan's motion until a final order—after resentencing—had been rendered. See Fla. R. Crim. P. 3.192 ("Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case."); see also Silvestrone v. Edell, 721

So. 2d 1173, 1175 (Fla. 1998) ("[T]he trial court retains inherent authority to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action"); Taufer v. Wells Fargo Bank, N.A., 278 So. 3d 335, 336-37 (Fla. 3d DCA 2019) ("Motions for reconsideration apply to 'nonfinal, interlocutory orders, and are based on a trial court's 'inherent authority to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action" (quoting Seigler v. Bell, 148 So. 3d 473, 478-79 (Fla. 5th DCA 2014))).²

We affirm the order denying Morgan's rule 3.800(a) motion upon reconsideration based on the motion filed by the State. Under Rudolf, the State could not appeal until resentencing had occurred and a final order rendered. We continue to hold that an order granting a rule 3.800(a) motion is not a final appealable order. Thus, the postconviction court had jurisdiction at the time the State sought reconsideration of the ruling; the ruling was an interlocutory order which the court had inherent authority to reconsider upon request by a party. And at the time of the request for reconsideration, the law had changed such that Morgan was not entitled to the resentencing originally granted and therefore the motion to correct illegal sentence was properly denied.

²We note that the First District concluded that "[b]ecause Simmons sought postconviction relief under rule 3.800(a), rule 3.192 did not authorize the postconviction court to reconsider its earlier ruling." Simmons, 274 So. 3d at 471-72. The rehearing provisions of rule 3.192 clearly do not apply to postconviction proceedings: "This rule shall not apply to postconviction proceedings pursuant to rule 3.800(a), 3.801, 3.850, 3.851, or 3.853." Fla. R. Crim. P. 3.192. However, the final statement of the rule, addressing reconsideration of interlocutory rulings, refers to "inherent authority" and further states that nothing in the rule—including its inapplicability to postconviction proceedings—is an exception to the court's inherent authority: "Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case." Id.

Morgan does not dispute that the law as it currently stands does not permit resentencing for defendants like Morgan who received life sentences with the possibility of parole. See Franklin v. State, 258 So. 3d 1239, 1241 (Fla. 2018) ("Florida's statutory parole process fulfills Graham's requirement that juveniles be given a 'meaningful opportunity' to be considered for release during their natural life based upon 'normal parole factors,' as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review." (citations omitted)), cert. denied, Franklin v. Florida, 139 S. Ct. 2646 (2019). We therefore certify conflict with Jordan, Simmons, Jones, Magill, and the cases which rely upon them to conclude that orders granting rule 3.800 motions are appealable by the State prior to resentencing and that where no appeal is taken the trial court loses jurisdiction to reconsider its ruling.

Affirmed; conflict certified.

VILLANTI and ROTHSTEIN-YOUAKIM, JJ., Concur.

SECOND DISTRICT COURT OF APPEAL OF FLORIDA
P.O. BOX 327
LAKELAND, FLORIDA 33802-0327
(863) 499-2290

May 4, 2020

Re: Darryl Morgan
v.
State of Florida
Appeal No.: 2D18-4940
Trial Court No.: 79-3874CFASO
Trial Court Judge:

Florida Supreme Court
Attn: Clerk's Office

Attached is a certified copy of the notice invoking the discretionary jurisdiction of the Supreme Court, pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

___ The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was paid through the portal.

___ The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was received by this court and is attached.

___ The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was not received by this court.

___ Petitioner/Appellant has been previously determined insolvent by the circuit court or our court in the underlying case.

___ Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee is required because:

- ☒ Summary Appeal, pursuant to rule 9.141
- ___ From the Unemployment Appeals Commission
- ___ A Habeas Corpus proceeding
- ___ A Juvenile case
- ___ Other

In criminal cases, the notice of appeal was filed in the lower tribunal on 12/13/18.

If there are any questions regarding this matter, please do not hesitate to contact this office.

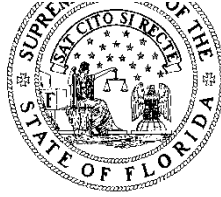
Sincerely,

Mary Elizabeth Kuenzel
Clerk

By: Joshua Dannelley

MK: jd

cc (without attachments):
Maureen E. Surber, A.P.D.
Allison C. Heim, A.A.G.



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

May 5, 2020

RE: DARRYL LEN MORGAN vs. STATE OF FLORIDA

CASE NUMBER: SC20-641

Lower Tribunal Case Number(s): 2D18-4940; 521979CF003874XXXXSO

Lower Tribunal Filing Date: 5/4/2020

The Florida Supreme Court has received the following documents reflecting a filing date of 5/4/2020.

Notice to Invoke Discretionary Jurisdiction seeking review of opinion dated April 3, 2020.

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr

cc:

MAUREEN E. SURBER

ALLISON C. HEIM

HON. MARY BETH KUENZEL, CLERK

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND
AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS
BE HAD IN SAID CAUSE, IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF
THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER,
AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE NELLY N. KHOUZAM CHIEF JUDGE OF THE
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT, AND
THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: May 06, 2020

SECOND DCA CASE NO. 18-4940

COUNTY OF ORIGIN: Pinellas

LOWER TRIBUNAL CASE NO. 79-3874CFASO

CASE STYLE: DARRYL LEN MORGAN v. STATE OF FLORIDA



Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

cc:

ALLISON C. HEIM, A.A.G.
MAUREEN E. SURBER, A.P.D.
DARRYL LEN MORGAN

ATTORNEY GENERAL, TAMPA
KEN BURKE, CLERK

mep

Supreme Court of Florida

MONDAY, JUNE 29, 2020

CASE NO.: SC20-641
 Lower Tribunal No(s):
 2D18-4940;
 521979CF003874XXXXSO

DARRYL LEN MORGAN

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

The Court accepts jurisdiction of this case.

Petitioner's initial brief on the merits must be served on or before July 20, 2020; respondent's answer brief on the merits must be served thirty days after service of petitioner's initial brief on the merits; and petitioner's reply brief on the merits must be served thirty days after service of respondent's answer brief on the merits.

The Clerk of the Second District Court of Appeal must file the record which must be properly indexed and paginated on or before August 28, 2020. The Clerk may provide the record in the format as currently maintained at the district court, either paper or electronic.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and COURIEL, JJ.,
 concur.

Oral argument will be set by separate order. Counsel for the parties will be notified of the oral argument date approximately sixty days prior to oral argument.

A True Copy

Test:



John A. Tomasino
 Clerk, Supreme Court



CASE NO.: SC20-641

Page Two

kj

Served:

MAUREEN E. SURBER

ALLISON C. HEIM

HON. MARY BETH KUENZEL, CLERK

2DCA Docket Report

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2D18-4940

DARRYL LEN MORGAN vs STATE OF FLORIDA

Type	Date	Description	Attached Order Information
Notice Notes: Filed by: WD STACEY M. SCHROEDER, A. P. D. 0065676	12/13/2018	Notice of Appeal Filed	
Letter Notes: Filed by: Not Entered	12/14/2018	Acknowledgment Letter 1	
Brief Notes: HELINGER, 86 PGS. Filed by: CC KEN BURKE, CLERK	01/14/2019	Received Records	
Brief Notes: ADDENDUM, 32 PGS. Filed by: CC KEN BURKE, CLERK	01/14/2019	Received Records	
Event Notes: Filed by:	01/18/2019	Designation of Public Defender	
Motion Notes: Filed by: WD LISA B. LOTT, A.P.D. 710555	01/22/2019	Motion Supplemental Record & Eot For Brief	ORD-GRANT SUPP.REC & EOT F/BRF Date: 01/24/2019 Due: 02/22/2019
Order Notes: Appellant's motion to supplement the record and for an extension of time is granted. Supplemental directions having already been filed, the clerk of the trial court is directed to supplement the record within thirty days, and the initial brief shall be served within sixty days of this order. Ordered by: Clerk/Standard	01/24/2019	ORD-GRANT SUPP.REC & EOT F/BRF	
Brief Notes: 6 PAGES Filed by:	01/31/2019	Supplemental Records	
Notice Notes: Filed by: PD MAUREEN E. SURBER, A.P.D. 153958	03/01/2019	Notice of Appearance	
Motion Notes: Filed by: PD MAUREEN E. SURBER, A.P.D. 153958	03/28/2019	Mot. for Extension of time to file Initial Brief	ORDER GRANTING EOT FOR INITIAL BRIEF Date: 03/29/2019 Due: 05/28/2019
Order	03/29/2019	ORDER GRANTING EOT FOR INITIAL BRIEF	

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2D18-4940

DARRYL LEN MORGAN vs STATE OF FLORIDA

Type	Date	Description	Attached Order Information
Notes: Appellant's motion for extension of time is granted, and the initial brief shall be served within 60 days from the date of this order. Ordered by: Clerk/Standard			
Brief	05/28/2019	Initial Appellant Brief on Merits	
Notes: Filed by: PD MAUREEN E. SURBER, A.P.D. 153958			
Motion	06/26/2019	Mot. for Extension of time to file Answer Brief	ORDER GRANTING EOT FOR ANSWER BRIEF Date: 06/27/2019 Due: 07/27/2019
Notes: Filed by: AE ALLISON C. HEIM, A.A.G. 112175			
Order	06/27/2019	ORDER GRANTING EOT FOR ANSWER BRIEF	
Notes: Appellee's motion for extension of time is granted, and the answer brief shall be served within 30 days from the date of this order. Ordered by: Clerk/Standard			
Motion	07/26/2019	Mot. for Extension of time to file Answer Brief	ORDER GRANTING EOT FOR ANSWER BRIEF Date: 07/29/2019 Due: 08/28/2019
Notes: Filed by: AE ALLISON C. HEIM, A.A.G. 112175			
Order	07/29/2019	ORDER GRANTING EOT FOR ANSWER BRIEF	
Notes: Appellee's motion for extension of time is granted, and the answer brief shall be served within 30 days from the date of this order. Ordered by: Clerk/Standard			
Brief	08/28/2019	Appellee Answer Brief	
Notes: Filed by: AE ALLISON C. HEIM, A.A.G. 112175			
Brief	08/28/2019	Case Perfected	
Notes: Filed by:			
Notice	10/17/2019	Notice of Supplemental Authority	
Notes: Filed by: PD MAUREEN E. SURBER, A.P.D. 153958			
Event	11/04/2019	Assigned Date	
Notes:			

2DCA Docket Report

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DARRYL LEN MORGAN vs STATE OF FLORIDA

Type	Date	Description	Attached Order Information
Filed by:			
Event	01/23/2020	Conference Date Set	
Notes: 2DCA			
Filed by:			
Disposition	04/03/2020	Affirmed	
Notes: ; conflict certified.			
Manner:	Authored Opinion		
Notice	05/04/2020	Notice of Discretionary Jurisdiction to Supreme Court	
Notes:			
Filed by:	PD MAUREEN E. SURBER, A.P.D. 153958		
US Sup Ct	05/04/2020	NOTICE OF DISCRETN. JURISDICTN	
Notes:			
SC Case:	SC20-641		
US Sup Ct	05/04/2020	Review Sent to Supreme Court	
Notes:			
SC Case:	SC20-641		
US Sup Ct	05/05/2020	Acknowledged Receipt from Supreme Court	
Notes:			
SC Case:	SC20-641		
Mandate	05/06/2020	Mandate	
Notes:			
Event	05/15/2020	West Publishing	
Notes:			
Filed by:			
US Sup Ct	06/29/2020	Acknowledged Receipt from Supreme Court	

2DCA Docket Report

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2D18-4940

DARRYL LEN MORGAN vs STATE OF FLORIDA

Type	Date	Description	Attached Order Information
		Notes: The Court accepts jurisdiction of this case. Petitioner's initial brief on the merits must be served on or before July 20, 2020; respondent's answer brief on the merits must be served thirty days after service of petitioner's initial brief on the merits; and petitioner's reply brief on the merits must be served thirty days after service of respondent's answer brief on the merits. The Clerk of the Second District Court of Appeal must file the record which must be properly indexed and paginated on or before August 28, 2020. The Clerk may provide the record in the format as currently maintained at the district court, either paper or electronic. CANADY, C.J., and POLSTON, LABARGA, LAWSON, and COURIEL, JJ., concur.	
SC Case:	SC20-641		

CERTIFICATE OF CLERK

STATE OF FLORIDA }
 }
 COUNTY OF POLK }

I, MARY ELIZABETH KUENZEL, Clerk of the District Court of Appeal of the State of Florida in and for the Second District, do hereby certify that the foregoing 3 records, as certified to this court by the clerk of the trial court, and 1 constructed record constitute the record in the case of Darryl Len Morgan v. State of Florida, 2D18-4940, as the same appears among the records and files of my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said District Court of Appeal of Florida at Lakeland, the headquarters of the court, on this the 7th day of July, 2020.



/s/ Mary Elizabeth Kuenzel
 Mary Elizabeth Kuenzel, Clerk
 District Court of Appeal
 Second District