

IN THE SUPREME COURT OF FLORIDA

REBECCA LEE FALCON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC13-865

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

RESPONDENT'S SECOND SUPPLEMENTAL ANSWER BRIEF

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OTHER AUTHORITIES:

Art. X, § 9, Fla. Const. 2

Ch. 2014-220, § 1, Laws of Fla. 2

Ch. 2014-220, § 2, Laws of Fla. 2

SUMMARY OF ARGUMENT

By their express language, the statutes that were amended and enacted pursuant to chapter 2014-220, Laws of Florida, are only applicable to crimes committed after July 1, 2014. Further, the Florida Constitution provides that amendment of a criminal statute shall not affect punishment for any crime previously committed, so the application of this newly enacted legislation would be unconstitutional.

ARGUMENT

ISSUE I

WHETHER THE RECENT LEGISLATION REGARDING JUVENILE SENTENCING ENACTED IN THE 2014 REGULAR SESSIONS HAS ANY IMPACT ON PETITIONER'S SENTENCE IMPOSED IN THIS CASE? (Restated)

The Florida Legislature recently enacted legislation which amended section 775.082, Florida Statutes, to provide that a person under the age of eighteen who actually killed, "shall be punished by a term of imprisonment for life if, after a sentencing proceeding conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence." Ch. 2014-220, § 1, Laws of Fla. In addition, section 921.1401, Florida Statutes, was created to provide for a sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence for those offenders who committed such offense "on or after July 1, 2014,..." *Id.* at § 2. Petitioner committed the murder in this case long before July 1, 2014, so the newly enacted legislation is not applicable to her case.

Further, the Florida Constitution imposes a restriction on retroactive application of criminal legislation. Article X, section 9 states that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This provision thus precludes any newly enacted criminal statutes from applying to pending criminal cases. See *Smiley v. State*, 966 So.2d 330, 336-37 (Fla. 2007) (newly enacted

self defense statute qualified as criminal statute because it has a direct impact on the prosecution of the offense of murder in Florida, and article X, section 9 of Florida's constitution made it impermissible for it to receive retroactive application where it would provide the defendant with a new affirmative defense); *Castle v. State*, 330 So.2d 10, 11 (Fla. 1976) (because ten years was the maximum penalty in effect when the crime was committed, the imposition of a later enacted lower sentence would be unconstitutional pursuant to article X, section 9 of the Florida Constitution); *State v. Pizzaro*, 383 So.2d 762 (Fla. 4th DCA 1980) (because retroactive application of an amended statute affecting prosecution is unconstitutional, the Youthful Offender Act, which alters the prescribed punishments for those persons meeting its requirements, cannot apply to offenses committed before its effective date).

The State again asserts that this Court need not consider the new legislation because petitioner's conviction became final in 2001 and as set forth in the State's original brief *Miller v. Alabama*, 132 S.Ct. 2455 (2012), does not qualify for retroactive application. The United States Supreme Court in *Miller v. Alabama* decision did not remove the State's authority or power to impose the penalty of life without parole for a juvenile homicide offender, but the Court instead, changed the procedures which are required in order to impose a life without parole sentence. Nevertheless, even if *Miller* is applied retroactively, pursuant to *Miller*, a trial court may still impose a life without parole

sentence if the trial court finds that the sentence would be appropriate after conducting an individualized hearing and considering the offender's youth and attendant characteristics. However, as fully set forth in the State's supplemental brief, after considering the juvenile homicide offenders individual characteristics, if the trial court finds that a life without parole sentence is not appropriate for the individual, the State submits that statutory revival is the appropriate remedy.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the affirmative, the decision of the District Court of Appeal holding that *Miller v. Alabama*, does not apply retroactively should be affirmed.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that on August 1, 2013, a copy hereof has been furnished by email to:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements
of Fla. R. App. P. 9.210.

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