

IN THE SUPREME COURT OF FLORIDA

DANTE RASHAD MORRIS,

Petitioner,

v.

CASE NO.: SC16-2271

STATE OF FLORIDA,

Respondent.

**ON NOTICE TO INVOKE DISCRETIONARY
JURISDICTION TO REVIEW A DECISION OF THE
SECOND DISTRICT COURT OF APPEAL**

MR. MORRIS' INITIAL BRIEF ON MERITS

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PRELIMINARY STATEMENT

In this brief the Petitioner, **DANTE RASHAD MORRIS**, will be referred to as “Mr. Morris.” The Respondent, the **STATE OF FLORIDA**, will be referred to as “the state.” The record on appeal will be referred to by the number of the volume, followed by a slash, followed by the appropriate page reference therein.

STATEMENT OF THE CASE AND FACTS

This case involves a direct appeal from a final judgment and sentences entered in the Circuit Court, Tenth Judicial Circuit, Polk County, Florida (trial court), which was affirmed by the Second District Court of Appeal in Morris v. State, 206 So.3d 154 (Fla. 2d DCA 2016).

Mr. Morris was convicted after a jury trial of two offenses: attempted felony murder and attempted armed robbery. He was convicted as being one of six young males involved in the attempted robbery of a merchant at the Lakeland Farmers Market. While the jury verdict concluded that Mr. Morris actually possessed a firearm during the commission of the crimes (1/128-29)^{1/}, there was no evidence that he personally fired a weapon during the incident. A 15 year old at the time of the offenses, he is currently serving concurrent 30 year sentences (1/8, 168-69, 177-81).

^{1/} He admitted in a police interview that he had a gun (5/669).

Only the legality of those sentences is at issue in this appeal.

The Second District originally issued an opinion on July 29, 2016. Morris v. State, 41 Fla. L. Weekly D1768. After Mr. Morris filed a timely motion for rehearing, rehearing en banc, or for written opinion on the Graham/Henry sentencing issue, the Second District issued a revised opinion which added a discussion of the sentencing issue. It is review of that decision which is now before this Court. As to the critical sentencing issue, the Second District stated:

In denying Mr. Morris' rule 3.800(b) motion, the trial court also rejected Mr. Morris' argument that pursuant to Henry v. State, 175 So.3d 675 (Fla. 2015), cert. denied, ___ U.S. ___, 136 S.Ct. 1455, 194 L.Ed.2d 552 (2016), he was entitled to resentencing under the framework established by chapter 2014-220, Laws of Florida. We affirm that aspect of the trial court's order on the authority of this court's decision in Williams v. State, 197 So.3d 569 (Fla. 2d DCA 2016). But see Peterson v. State, 193 So.3d 1034 (Fla. 5th DCA 2016).

Morris, 206 So.3d at 154.

Mr. Morris filed a timely notice to invoke the discretionary jurisdiction of this court on December 21, 2016. This court accepted jurisdiction in the case on February 24, 2017. Morris v. State, ___ So.3d ___ (Fla. 2/24/17).

SUMMARY OF THE ARGUMENT

AS A JUVENILE, MR. MORRIS RECEIVED AN ILLEGAL SENTENCE THAT DID NOT PROVIDE FOR JUDICIAL REVIEW

Essentially the Second District has ruled that Graham/Henry error does not apply because Mr. Morris did not receive a de facto life sentence. That, quite simply, is not the law in this state. His 30 year sentences must be vacated and the case remanded for resentencing applying the law as set forth in chapter 2014-220.

ARGUMENT

AS A JUVENILE, MR. MORRIS RECEIVED AN ILLEGAL SENTENCE THAT DID NOT PROVIDE FOR JUDICIAL REVIEW

The Second District's decision that Mr. Morris is not entitled to be resentenced under the 2014 juvenile sentencing statutes must be rejected by this court. The Second District's opinion expressly and directly conflicts with opinions of this court and other district courts of appeal on this same sentencing issue. This court thus has jurisdiction pursuant to Article V, §3(b)(3), Florida Constitution.

Before fully addressing the merits, on the jurisdictional issue Mr. Morris advises the court it has a number of other cases pending before it which also present the same Graham/Henry issue. One of them is Peterson v. State, 193 So.3d 1034 (Fla.

5th DCA 2015), review pending, SC16-1211^{2/}. This is the case the Second District expressly recognized in its December 9 Morris opinion as contrary to its decision. Peterson has been stayed pending the result in Kelsey v. State, SC15-2079. Kelsey was decided on December 8, 2016. Kelsey v. State, 206 So.3d 5 (Fa. 2016). On December 29, 2016, the court issued an order to show cause why it should not decline review in Peterson, based on the Kelsey decision^{3/}. As of the date this brief is filed Peterson has not yet been decided.

Another appears to be Lee v. State, SC14-416, in which the court accepted jurisdiction on November 17, 2016, to review the Second District's decision in Lee v. State, 130 So.3d 707 (Fla. 2d DCA 2013). There the Second District upheld a 40 year sentence imposed on a juvenile in the face of a Graham challenge. Lee is still in the briefing stage.

Another case pending at the jurisdiction stage is Roman v. State, SC 16-2148, which seeks review of Roman v. State, 203 So.2d 1019 (Fla. 2d DCA 2016). There

^{2/} Apparently no review was ever sought of the Second District's decision in Williams v. State, 197 So.3d 569 (Fla. 2d DCA 2016), relied on by the Second district in its December 9 Morris opinion.

^{3/} In its January 12, 2017, response to the court's order to show cause in Peterson, the state advised this court that, based on Kelsey, it should decline to exercise jurisdiction. That is a concession that the Fifth District correctly decided Peterson. It can only mean that the Second District incorrectly decided Morris.

the Second District upheld 55 year sentences. It is important to note that in doing so it cited to the same case as it cited in upholding Mr. Morris' sentences - Williams, supra - and certified conflict with Peterson, supra, which it cited to with a "but see" in the Morris opinion. In Roman this court issued an order to show cause why in light of Kelsey jurisdiction should not be granted and the case remanded for resentencing. On January 13, 2017, the state filed a response to that order in which it asserted that the sentence was not illegal but said it "... can offer no other reasons why [Kelsey's] provisions should not apply in this case."

On the merits, in Henry v. State, 175 So.3d 675 (Fla. 2015), cert. denied, 136 S.Ct. 1455 (2016), this court applied the constitutional mandate of Graham v. Florida, 560 U.S. 48 (2010)(Florida's practice of sentencing juveniles to life in prison for non-homicide offenses violated the Eight Amendment), and ruled that, when sentencing a juvenile who has been convicted as an adult of non-homicide charges, the Eight Amendment required that the trial court must afford the defendant a meaningful opportunity for early release. The court stated "... the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this special class of offenders" 175 So.3d at 680. Henry ordered the defendant's sentences vacated and the case remanded for resentencing in accord with chapter 2014-220 and the new §775.082(3), §921.1401, and §921.1402, Florida Statutes (2014). Id.

It must be noted that each of these “new” statutes was in effect on August 1, 2014, when Mr. Morris was originally sentenced, and each should have been applied to his case. See also Gridine v. State, 175 So.3d 672 (Fla. 2015)(sentence for juvenile non-homicide offender did not provide a meaningful opportunity for early release, and thus was unconstitutional), cert. denied, 136 S.Ct. 1387 (2016); Lawton v. State, 181 So.3d 452 (Fla. 2015)(accord). In its answer brief on direct appeal, the state acknowledged that these new statutes were in effect and should have been applied to Mr. Morris’ case (AB 32-33).

More recently, in Thomas v. State, 177 So.3d 1275 (Fla. 2015)(table), this court unanimously and summarily quashed the First District’s decision in Thomas v. State, 135 So.3d 590 (Fla. 1st DCA 2014), and ordered resentencing “ . . . in conformance with the framework established in chapter 2014-220, Laws of Florida” In Thomas the First District had affirmed the defendant’s concurrent 30 (for armed robbery) and 40 (for first degree murder) year sentences. This court’s decision thus vacated both sentences. Pursuant to Thomas, Mr. Morris’ concurrent 30 year non-homicide sentences must also be vacated and the case remanded for resentencing in accord with chapter 2014-220.

Most recently, the court reviewed the decision in Kelsey v. State, 183 So.3d 439 (Fla. 1st DCA 2015). In Kelsey the First District had ruled that a juvenile who

had received a 45 year non-homicide sentence was not required to be resentenced under the 2014 statutes. Id. at 440-42. This court reversed for resentencing under the 2014 statutes. Kelsey v. State, 206 So.3d 5, 11 (Fla. 2016)^{4/}. The court reiterated that juveniles who are serving lengthy prison sentences are entitled to periodic judicial review.

After Kelsey this court has accepted jurisdiction, summarily quashed district court decisions, and remanded for either reconsideration or resentencing in a number of cases^{5/}. See e.g., McDowell v. State, ___ So.3d ___ (Fla. 3/6/17)[2017 WL 875863](remanded for reconsideration in light of Kelsey); Hart v. State, ___ So.3d ___ (Fla. 3/3/17)[2017 WL 836804](accord); Galan v. State, ___ So.3d ___ (Fla. 12/13/16)[41 Fla. L. Weekly S621; 2016 WL 7212331](remanded for resentencing in light of Kelsey, Henry, and Gridine); Smith v. State, ___ So.3d ___ (Fla. 12/13/16)[41 Fla. L. Weekly S621; 2016 WL 7217234](accord); Trejo v. State, ___

^{4/} This court's Kelsey decision was sent to the Second District as supplemental authority for Mr. Morris on the morning of December 8, 2016. The Second District issued its second Morris opinion the following morning, December 9, 2016, with a command that no further motions for rehearing would be entertained. So it is unknown whether the issuing panel ever saw this court's Kelsey opinion before its decision was released the next morning.

^{5/} It appears that the remands for reconsideration have been in cases arising from the First District, from which Kelsey arose, and the remands for resentencing have arisen from other districts.

So.3d ___ (Fla. 10/11/16)[41 Fla. L. Weekly S454; 2016 WL 5900149](50 year non-homicide sentence; remanded for resentencing in light of Henry and Gridine); Michel v. State, ___ So.3d ___ (Fla. 10/11/16)[41 Fla. L. Weekly S454; 2016 WL 5900146](40 year non-homicide sentence; remanded for resentencing in light of Henry and Gridine).

Besides Peterson, supra, the Fifth District has ruled in this same manner in other cases. See Burrows v. State, ___ So.3d ___ (Fla. 5th DCA 3/3/17)[42 Fla. L. Weekly D528; 2017 WL 836137](concurrent 25 year sentences for non-homicide offenses; applied Kelsey to reverse for resentencing under chapter 2014-220); Tyson v. State, 199 So.3d 1087 (Fla. 5th DCA 2016)(sentences totaling 50 years reversed); Barnes v. State, 175 So.3d 380 (Fla. 5th DCA 2015)(60 years sentence reversed).

The Third District has recognized that this is the correct result. In Francis v. State, 208 So.3d 105 (Fla. 3d DCA 2015), the court reversed a juvenile's non-homicide sentences. In doing so it noted "If Francis is sentenced to a term-of-years in excess of twenty years, he is entitled to subsequent judicial review of his sentence." Id. at 108. See also Grantley v. State, ___ So.3d ___ (Fla. 3d DCA 2/8/17)[42 Fla. L. Weekly D349; 2017 WL 519355](35 years sentence reversed).

The same result - a resentencing in accord with Henry and Gridine and Lawton and Thomas and Kelsey - must occur in Mr. Morris' case. Any other decision will

deny Mr. Morris his state and federal rights to equal protection under the law. Amendments V, XIV, United States Constitution; Article I, §2, Florida Constitution. The court therefore must vacate Mr. Morris' sentences, and remand for resentencing for that result to occur.

CONCLUSION

Based on the arguments and authorities set forth in this brief, this Court must vacate the Second District's opinion on the Graham/Henry issue, and remand for resentencing in accord with chapter 2014-220.

Respectfully submitted this 15th day of March, 2017.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this brief was efiled and that system sent a true copy to counsel for the Appellee: Wendy Buffington, Assistant Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607-7013, on March 15, 2017.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is typed in 14 point TIMES NEW ROMAN proportional space font.

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