

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' BRIEF ON JURISDICTION

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RECEIVED, 01/03/2017 10:48:30 AM, Clerk, Supreme Court

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS. i

TABLE OF CITATIONS. ii

PRELIMINARY STATEMENT..... 1

STATEMENT OF THE CASE AND FACTS. 1

SUMMARY OF THE ARGUMENT. 3

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION BECAUSE

A)THIS ISSUE IS ALREADY PENDING FOR REVIEW BY

THIS COURT, AND

B) SECOND DISTRICT’S DECISION ON THE

GRAHAM/HENRY ISSUE EXPRESSLY AND DIRECTLY

CONFLICTS WITH DECISIONS OF THIS AND OTHER

COURTS. 4

CONCLUSION. 8

CERTIFICATE OF SERVICE. 9

CERTIFICATE OF COMPLIANCE.. 9

APPENDIX. filed as separate document

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Francis v. State</u> , ___ So.3d ___ (Fla. 3d DCA 12/2/15)[40 Fla. L. Weekly D1948; 2015 WL 7740389].....	7
<u>Galan v. State</u> , ___ So.3d ___ (Fla. 12/13/16)[41 Fla. L. Weekly S621; 2016 WL 7212331].....	7
<u>Graham v. Florida</u> , 560 U.S. 48 (2010).	5
<u>Gridine v. State</u> , 175 So.3d 672 (Fla. 2015).....	6, 8
<u>Henry v. State</u> , 175 So.3d 675 (Fla. 2015).....	2, 5, 8
<u>Kelsey v. State</u> , ___ So.3d ___ (Fla. 12/8/16)[41 Fla. L. Weekly S600; 2016 WL 7159099].....	7, 8
<u>Kelsey v. State</u> , 183 So.3d 439 (Fla. 1st DCA 2015).....	6-7
<u>Lawton v. State</u> , 181 So.3d 452 (Fla. 2015).....	6, 8
<u>Lee v. State</u> , 130 So.3d 707 (Fla. 2d DCA 2013).	5
<u>Morris v. State</u> , ___ So.3d ___ (Fla. 2d DCA 12/9/16)[41 Fla. L. Weekly D2735; 2016 WL 7177700].....	passim

<u>Peterson v. State,</u> 193 So.3d 1034 (Fla. 5th DCA 2016).....	2, 4, 7
<u>Smith v. State,</u> ____ So.3d ____ (Fla. 12/13/16)[41 Fla. L. Weekly S621; 2016 WL 7217234].....	7
<u>Thomas v. State,</u> 177 So.3d 1275 (Fla. 2015)	6, 8
<u>Thomas v. State,</u> 135 So.3d 590 (Fla. 1st DCA 2014)	6
<u>Tyson v. State,</u> 199 So.3d 1087 (Fla. 5th DCA 2016)	7
<u>Williams v. State,</u> 197 So.3d 569 (Fla. 2d DCA 2016)	2, 4

OTHER AUTHORITIES

§775.082(3), Florida Statutes (2014).....	6, 7
§921.1401, Florida Statutes (2014).....	6, 7
§921.1402, Florida Statutes (2014).....	6, 7
Amendment VIII, United States Constitution	5
Chapter 2014-220, Laws of Florida	5, 6

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, ___ So.3d ___ (Fla. 2d DCA 12/9/16)[41 Fla. L. Weekly D2735; 2016 WL 7177700]. A copy of the Second District's opinion is filed as Appendix A.

Mr. Morris was convicted after a jury trial of two offenses: attempted felony murder and attempted armed robbery. A 15 year old at the time of the offenses, he is currently serving concurrent 30 year sentences. 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).

Mr. Morris filed a timely notice to invoke the discretionary jurisdiction of this Court on December 21, 2016.

SUMMARY OF THE ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION IN THIS CASE BECAUSE

A) THIS ISSUE IS ALREADY PENDING FOR REVIEW BY THIS COURT, AND

B) SECOND DISTRICT'S DECISION ON THE GRAHAM/HENRY ISSUE EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS AND OTHER COURTS

Essentially the Second District has ruled that Graham/Henry error does not apply because Mr. Morris does not have a de facto life sentence. That, quite simply, is not the law in this state. This Court should accept jurisdiction in this matter because the Court already has pending other cases dealing with the same issue. The decisions in those cases will have equal application to Mr. Morris. Secondly, the Second District's decision directly and expressly conflicts with numerous decisions of this and other Florida courts on the Graham/Henry issue.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION IN THIS CASE BECAUSE

A) THIS ISSUE IS ALREADY PENDING FOR REVIEW BY THIS COURT, AND

B) SECOND DISTRICT'S DECISION ON THE GRAHAM/HENRY ISSUE EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS AND OTHER COURTS

The Second District's decision that Mr. Morris is not entitled to be resentenced under the 2014 juvenile sentencing statutes must be reviewed and rejected by this court.

A. This issue is pending before the court in other cases.

The court has 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^{1/}. This is the case the Second District expressly recognized in its December 9 Morris opinion that was contrary to its decision. Peterson has been stayed pending the result in Kelsey v. State, SC15-2079. Kelsey was decided on December 8, 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. However, as of the date this brief is filed, Peterson has not yet been

^{1/} 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.

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 45 year sentence imposed on a juvenile in the face of a Graham challenge.

It is respectfully submitted that this court should, at least, stay the resolution of Mr. Morris' case pending the resolution of these cases.

B. Second District's decision on sentencing issue expressly and directly conflicts with other appellate decisions.

The Second District's opinion expressly and directly conflicts with opinions of this court and other district courts of appeal on the sentencing issue.

In Henry v. State, 175 So.3d 675 (Fla. 2015), cert. denied, 136 U.S. 1455 (2016), this court applied the constitutional mandate of Graham v. Florida, 560 U.S. 48 (2010), and ruled that, when sentencing a juvenile who has been convicted as an adult on non-homicide charges, 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 679. 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).

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 U.S. 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)[2015 WL 5178605], 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’s 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 new statutes. This court reversed for resentencing under the 2014 statutes. Kelsey v. State, ___ So.3d ___ (Fla. 12/8/16)[41 Fla. L. Weekly S600; 2016 WL 7159099]^{2/}. There the court reiterated that juveniles who are serving lengthy prison sentences are entitled to periodic judicial review.

On December 13, 2016, this court - citing Kelsey, Henry, and Gridine - accepted jurisdiction, quashed district court decisions, and remanded for resentencing in Galan v. State, SC14-1334 and Smith v. State, SC13-1816. See Galan v. State, ___ So.3d ___ (Fla. 12/13/16)[41 Fla. L. Weekly S621; 2016 WL 7212331]; Smith v. State, ___ So.3d ___ (Fla. 12/13/16)[41 Fla. L. Weekly S621; 2016 WL 7217234].

Besides Peterson, supra, the Fifth District has ruled in this same manner in other cases. See Tyson v. State, 199 So.3d 1087 (Fla. 5th DCA 2016).

The Third District has recognized that this is the correct result. In Francis v. State, ___ So.3d ___ (Fla. 3d DCA 12/2/15)[40 Fla. L. Weekly D2673; 2015 WL

^{2/} 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 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.

7740389], rehearing denied December 22, 2016, 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."

The same result - a resentencing in accord with Henry and Gridine and Lawton and Thomas and Kelsey - must occur in Mr. Morris' case. The court must accept jurisdiction, vacate the sentences, and remand for resentencing for that result to occur.

CONCLUSION

Based on the arguments and authorities set forth in this brief, this Court should accept jurisdiction over this case and either summarily vacate the Second District's opinion on the Graham/Henry issue, or order briefing on the merits.

Respectfully submitted this 3d day of January, 2017.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this brief and appendix were 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 January 3, 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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