Third District Court of Appeal

State of Florida

Opinion filed December 23, 2015.
Not final until disposition of timely filed motion for rehearing.

No. 3D13-943
Lower Tribunal No. 97-21540B

Daniel Torres,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Eric W. Hendon, Judge.

Charles G. White, for appellant.

Pamela Jo Bondi, Attorney General, and Linda S. Katz, Assistant Attorney General, for appellee.

Before SALTER, FERNANDEZ and LOGUE, JJ.

FERNANDEZ, J.

Daniel Torres appeals the denial of his Florida Rule of Criminal Procedure 3.850 motion in which he argued that his life sentences without the possibility of parole for his convictions of first degree murder and armed robbery were illegal,

pursuant to Miller v. Alabama, 132 S. Ct. 2455 (2012), and Graham v. Florida, 560 U.S. 48 (2010), for offenses that occurred when Torres was a juvenile. We reverse and remand for resentencing of both counts.

In 1997, the State charged Torres with first degree murder and robbery with a weapon. Torres received a mandatory life sentence without parole with a twenty-five year minimum mandatory on count one for the first degree murder conviction. He received a second life sentence without parole with a three-year minimum mandatory on count two for the armed robbery conviction. This Court affirmed his convictions.[1]

The trial court denied Torres' request for resentencing on count one based on Geter v. State, 115 So. 3d 375, 384 (Fla. 3d DCA 2012), which held that Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012), cannot be retroactively applied to "juvenile homicide offenders whose convictions and sentences were final as of June 25, 2012, the date Miller was issued." The trial court also denied Torres' motion based on Lawton v. State, 109 So. 3d 825, 828-29 (Fla. 3d DCA 2013), in which this Court held that a juvenile offender can be legally sentenced to life imprisonment without parole for a non-homicide charge as long as the offense was committed out of the same criminal episode as a corresponding homicide, and thereby created an exception to Graham v. Florida, 560 U.S. 48, 74–75 (2010).

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[1] See Torres v. State, 802 So. 2d 412 (Fla. 3d DCA 2001).

Lawton, 109 So. 3d 828–30.

Torres is entitled to resentencing on both counts. A sentencing framework that mandates life in prison without possibility of parole for juvenile offenders is unconstitutional. Miller, 132 S. Ct. at 2469; Graham, 560 U.S. at 80. Miller applies retroactively to defendants like Torres who were juveniles at the time of a homicide offense and whose sentences became final prior to the Miller decision. Falcon v. State, 162 So. 3d 954, 956 (Fla. 2015). The appropriate remedy for a juvenile offender whose sentence is unconstitutional under Miller is resentencing in conformance with chapter 2014–220, Laws of Florida, provided they present the court with a timely rule 3.850 motion. See §§ 775.082, 921.1401, 921.1402, Fla. Stat. (2015). See also Horsley v. State, 160 So. 3d 393 (Fla. 2015); Wadley v. State, 2015 WL 4549642 (Fla. 3d DCA 2015).

The State agrees that Torres is entitled to resentencing on count two for the non-homicide offense of armed robbery but argues that the appropriate remedy is resentencing pursuant to the applicable governing statute for the subject offense, and not pursuant to chapter 2014-220, Laws of Florida, in cases that involve violations under Graham. We conclude that Torres' life sentence for the non-homicide offense is also subject to resentencing in conformance with chapter 2014-220, Laws of Florida. See Wadley v. State, 2015 WL 4549642 (Fla. 3d DCA 2015)(involving a sentence of life in prison without parole for murder in the first

degree and armed robbery, vacating life sentences for both homicide and non-homicide offenses, and remanding for resentencing pursuant to chapter 2014-220, Laws of Florida). Torres is thus entitled to resentencing on both counts, pursuant to chapter 2014-220, Laws of Florida.

We therefore reverse the trial court's denial of Torres' 3.850 motion. We remand this case for resentencing on both counts, pursuant to chapter 2014–220, Laws of Florida, as codified in sections 775.082, 921.1401, 921.1402, Florida Statutes (2015).

Reversed and remanded with directions.