IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

KYLE HOOPER,

Appellant,

v. Case No. 5D12-3466

STATE OF FLORIDA,

Appellee.

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Opinion filed May 30, 2014

Appeal from the Circuit Court
for Marion County,
David B. Eddy, Judge.

James S. Purdy, Public Defender, and Kevin R. Holtz, Assistant Public Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Pamela J. Koller, Assistant Attorney General, Daytona Beach, for Appellee.

ORFINGER, J.

Kyle Hooper appeals his conviction and sentence for the first-degree murder of Seath Jackson. Hooper raises a meritorious issue regarding his sentence of life imprisonment without the possibility of parole.

Hooper was a juvenile at the time that he, and others, murdered Jackson. Following his conviction, Hooper was sentenced to life in prison without the possibility of

parole. Florida law authorizes life without parole or death as the only two possible sentences for first-degree murder. See § 775.082(1), Fla. Stat. (2011). Those sentencing alternatives are no longer permitted for juveniles, following two United States Supreme Court decisions. In Roper v. Simmons, 543 U.S. 551 (2005), the Court banned the death penalty for all juvenile offenders. In Miller v. Alabama, 132 S. Ct. 2455 (2012), the Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. See also Graham v. Florida, 560 U.S. 48, 75 (2010) ("A State is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."). Miller requires trial courts to hear mitigating circumstances, such as the juvenile's age, age-related characteristics, and the nature of their crimes before sentencing a juvenile to life in prison without the possibility of parole. 132 S. Ct. at 2475. However, no statutory authority currently exists in Florida law authorizing a sentencing court to comply with Miller.[1] The combined effect of these decisions has been to create considerable uncertainty regarding what sentence can be legally imposed in Florida on a juvenile convicted of first-degree murder.

This Court recently addressed this issue in Horsley v. State, 121 So. 3d 1130 (Fla. 5th DCA), review granted, Nos. SC13-1938, SC13-2000 (Fla. Nov. 14, 2013). Applying the principle of statutory revival, we held that the only sentence now available in Florida for a juvenile convicted of capital murder is life with the possibility of parole after twenty-

[1] The Florida legislature enacted CS/HB 7035, effective July 1, 2014, amending section 775.082, Florida Statutes, and creating sections 921.1401, 921.1402, Florida Statutes, and several other statutes to comply with Miller. At the date of this opinion, the Governor has not signed the bill.

five years. Id. Consistent with our precedent, we vacate Hooper's life-without-parole sentence and remand for resentencing on that charge. As we did in Horsley, we certify the following question to the Florida Supreme Court as a matter of great public importance:

> WHETHER THE SUPREME COURT'S DECISION IN MILLER V. ALABAMA, 132 S. CT. 2455 (2012), WHICH INVALIDATED SECTION 775.082(1)'S MANDATORY IMPOSITION OF LIFE WITHOUT PAROLE SENTENCES FOR JUVENILES CONVICTED OF FIRST-DEGREE MURDER, OPERATES TO REVIVE THE PRIOR SENTENCE OF LIFE WITH PAROLE ELIGIBILITY AFTER TWENTY-FIVE YEARS PREVIOUSLY CONTAINED IN THAT STATUTE?

AFFIRMED in part; REMANDED with instructions for resentencing; QUESTION CERTIFIED.

TORPY, C.J., and EVANDER, J., concur.