

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

JASON ALLEN,

Petitioner,

v.

Case No. 5D14-3194

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed October 16, 2015

3.850 Appeal from the Circuit Court
for Orange County,
Timothy R. Shea, Judge.

James S. Purdy, Public Defender and
Rose M. Levering, Assistant Public
Defender, Daytona Beach, for Petitioner.

Pamela Jo Bondi, Attorney General
Tallahassee, Kristen L. Davenport and
Bonnie Jean Parrish, Assistant Attorney
Generals, Daytona Beach, for
Respondent.

PER CURIAM.

Jason Allen, through appointed counsel, appeals the summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. The motion alleges that in 1998 Allen was sentenced to unconstitutional mandatory life sentences in prison without the possibility of parole for first-degree murder and armed robbery based on a

special finding that he used, carried, or displayed a firearm. He was a 17-year-old juvenile at the time of his offenses. Thus, Allen claims he is entitled to resentencing under Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012) and Graham v. Florida, 560 U.S. 48, 74-75 (2010). The State concedes these errors. We agree that relief is warranted and reverse the order summarily denying Allen's claims.

The Florida Supreme Court held that the Miller decision applies retroactively to all juvenile offenders whose convictions were final when Miller was decided. Falcon v. State, 162 So. 3d 954, 960-62 (Fla. 2015). Therefore, it is undisputed that Allen is entitled to resentencing for his murder conviction. Although Allen also raised a Graham claim, with regard to his non-homicide armed robbery conviction, the trial court failed to address this claim. See 560 U.S. at 74-75. Accordingly, we remand to the trial court for it to consider the Graham claim on the merits. Alzamora v. State, 152 So. 3d 865 (Fla. 5th DCA 2014) (finding that because the trial court failed to address a claim, remand was necessary so that it could properly consider that claim).

REVERSED and REMANDED.

LAWSON, C.J., PALMER and BERGER, JJ., concur.