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

JOHNNY BARNES,

Appellant,

v. Case No. 5D14-335

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed July 17, 2015

Appeal from the Circuit Court
for Orange County,
Frederick J. Lauten, Judge.

James S. Purdy, Public Defender, and George D.E. Burden and Leonard R. Ross, Assistant Public Defenders, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Rebecca Rock McGuigan, Assistant Attorney General, Daytona Beach, for Appellee.

PALMER, J.

Johnny Barnes (the defendant) timely appeals his sentences, which were entered by the trial court following a jury verdict. The defendant was convicted, as an adult, of multiple counts of the following crimes which were committed when he was a

juvenile: aggravated battery with a firearm, aggravated assault with a firearm, carrying a concealed firearm, and resisting an officer without violence. The charges arose after the defendant was accused of firing a gun during a house party, injuring nine people. The defendant was sentenced to a total of sixty years in prison.

The defendant raises two issues on appeal, only one of which merits discussion. Citing Graham v. Florida, 560 U.S. 48 (2010) (holding that sentencing a juvenile offender to life without parole for non-homicide crimes violates the Eighth Amendment), the defendant contends that his sixty-year prison sentences are unconstitutional because his convictions were for non-homicide offenses, committed when he was seventeen years-old. We agree.

In Henry v. State, 40 Fla. L. Weekly S147 (Fla. Mar. 19, 2015), the Florida Supreme Court 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:

> In light of the United States Supreme Court's long-held and consistent view that juveniles are different—with respect to prison sentences that are lawfully imposable on adults convicted for the same criminal offenses—we conclude that, when tried as an adult, the specific sentence that a juvenile nonhomicide offender receives for committing a given offense is not dispositive as to whether the prohibition against cruel and unusual punishment is implicated.…[W]e have determined that [Graham v. Florida, 560 U.S. 48 (2010)] applies to ensure that juvenile nonhomicide offenders will not be sentenced to terms of imprisonment without affording them a meaningful opportunity for early release based on a demonstration of maturity and rehabilitation. See [Graham, 560 U.S. at 75].
>
> In light of Graham, and other Supreme Court precedent, we conclude that the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this

> special class of offenders for demonstrable maturity and reform in the future because any term of imprisonment for a juvenile is qualitatively different than a comparable period of incarceration is for an adult. See id. at 70–71[. . .],("Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender.... This reality cannot be ignored."); Roper, 543 U.S. at 553, 125 S.Ct. 1183 ("Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." (citing Stanford, 492 U.S. at 395, 109 S.Ct. 2969)).

The Henry Court ordered the case to be remanded for resentencing in accordance with Florida's 2014 juvenile sentencing legislation codified in sections 775.082 and 921.1402, Florida Statutes.

Section 775.082(3)(b)1. 2. a-c, provides the following:

> **Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.**
> . . . .
> (3) A person who has been convicted of any other designated felony may be punished as follows:
> . . . .
> (b) 1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.
> 2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.
> a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of

> more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).
> b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).
> c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

Section 921.1402(2)(b)-(c) provides, in relevant part, the following:

> **Review of sentences for persons convicted of specified offenses while under the age of 18 years.**
> . . . .
> [2](b) A juvenile offender sentenced to a term of more than 25 years under . . . section 775.082(3)(b)2. a. is entitled to a review of his or her sentence after 25 years.
> (c) A juvenile offender sentenced to a term of more than 15 years under . . . section 775.082(3)(b)2. b. is entitled to a review of his or her sentence after 15 years.

Thus, the defendant is entitled to receive judicial review of his sentences after either fifteen or twenty-five years, depending on the court's determination as to whether the defendant intended or attempted to kill any of his victims. Because the trial court failed to make the required written findings as to whether the defendant was entitled to receive a sentence review, we must reverse and remand for resentencing.[1]

REVERSED in part; REMANDED.

[1] The statutory provisions governing juvenile sentencing do not apply to the defendant's five-year sentence for count twenty and his one-year sentence for count twenty-one; thus, resentencing on these counts is not necessary.

BERGER and WALLIS, JJ., concur.