

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

PAUL EDWARD MAGILL,

Appellant,

v.

Case No. 5D19-1478

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 20, 2019

3.800 Appeal from the Circuit
Court for Marion County,
Steven G. Rogers, Judge.

James S. Purdy, Public Defender, and
Ailene S. Rodgers, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

COHEN, J.

ON CONCESSION OF ERROR

Paul Magill appeals the postconviction court's order setting aside his previously granted motion to correct illegal sentence.

In 1988, Magill was sentenced to life with the possibility of parole on a first-degree murder conviction. In 2016, he moved to correct illegal sentence, arguing that he was entitled to resentencing pursuant to Miller v. Alabama, 567 U.S. 460 (2013), Graham v.

Florida, 560 U.S. 48 (2010), and Atwell v. State, 197 So. 3d 1040 (Fla. 2016). The State conceded error, and the postconviction court granted Magill's motion, appointed Magill counsel, and set the case for a status conference.

In 2018, the State moved to set aside the postconviction court's order granting Magill's motion to correct illegal sentence. It argued that because Magill was eligible for parole, pursuant to Michel v. State, 257 So. 3d 3 (Fla. 2018), he was no longer entitled to resentencing, as his sentence was not illegal. The postconviction court granted the State's motion and vacated the order granting Magill's motion, citing Franklin v. State, 258 So. 3d 1239 (Fla. 2018), and Michel, 257 So. 2d at 3. This appeal followed.

We find that the postconviction court lacked authority to vacate its initial order granting Magill's motion because that order became final when neither party moved for rehearing or appealed. See Wehr v. State, 279 So. 3d 340 (Fla. 5th DCA 2019); Simmons v. State, 274 So. 3d 468, 470 (Fla. 1st DCA 2019) ("Because the order granting resentencing became final when neither party moved for rehearing or appealed the order, the trial court had no authority to enter a second order rescinding the original order."); see Taylor v. State, 140 So. 3d 526, 527 (Fla. 2014) ("[A]n order disposing of a postconviction motion which partially denies and partially grants relief is a final order for purposes of appeal, even if the relief granted requires subsequent action in the underlying case, such as resentencing.").

In its answer brief, the State acknowledged Simmons and conceded that Magill must receive a resentencing hearing. Accordingly, we quash the postconviction court's order setting aside its previous order granting Magill's motion for resentencing. As both

parties observe, pursuant to Franklin and Michel, upon resentencing, Magill may receive the same sentence of life with the possibility of parole.

QUASHED and REMANDED with instructions.

EVANDER, C.J., and WALLIS, J., concur.