

REL: May 6, 2022

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

---

CR-18-1090

---

Lionel Rory Francis

v.

State of Alabama

Appeal from Madison Circuit Court  
(CC-17-3377)

On Return to Second Remand

WINDOM, Presiding Judge.

This case was remanded to the circuit court on December 16, 2020, and again on August 27, 2021, for the circuit court to vacate Lionel Rory Francis's sentence of death and to sentence him to life in prison without

the possibility of parole. The circuit court has complied with this Court's instructions.

The State has filed a brief on return to remand, asserting that the circuit court erred in resentencing Francis to life in prison without the possibility of parole. The State concedes that in doing so the circuit court complied with this Court's instructions; its arguments on return to remand in effect seek to relitigate Part I of this Court's original opinion, Francis v. State, [Ms. CR-18-1090, Dec. 16, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Crim. App. 2020). The State reasserts its argument that the circuit court correctly used a conduct-based approach, similar to the approach used for sentence enhancement under the Habitual Felony Offender Act ("HFOA"), in evaluating Francis's prior conviction and sentencing him to death, and it argues that, regardless, Francis's conduct constituted a felony under North Dakota law. However, these arguments were considered on original submission and decided adversely to the State. This Court sees no need to revisit them.

That said, this Court notes that in Griffin v. State, 790 So. 2d 267, 301 (Ala. Crim. App. 1999), rev'd on other grounds, 790 So. 2d 351 (Ala. 2000), this Court, while addressing the admissibility of evidence of a prior

conviction in the penalty phase, held that the principles of Rule 26.6(b)(3)(iv), Ala. R. Crim. P., were applicable to sentencing in a capital case. This holding was implicitly overruled by our opinion on original submission; we now explicitly overrule it.

Accordingly, Francis's sentence of life in prison without the possibility of parole is affirmed.

**AFFIRMED.**

Kellum, McCool, Cole, and Minor, JJ., concur.