

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

JOSE MAISONET-MALDONADO,

Appellant,

v.

Case No. 5D18-942

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 18, 2019

3.850 Appeal from the Circuit Court
for Orange County,
John Marshall Kest, Judge.

James S. Purdy, Public Defender, and
Andrew Mich, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Kellie A. Nielan, Assistant
Attorney General, Daytona Beach, for
Appellee.

PER CURIAM.

Jose Maisonet-Maldonado appeals the summary denial of ground eight of his motion seeking postconviction relief pursuant to Florida Rule Criminal Procedure 3.850.

Maisonet-Maldonado argues that the single homicide rule prohibits his convictions and

sentences for vehicular homicide and fleeing and eluding causing serious injury or death that involve the same victim. We agree.

The single homicide rule was adopted by the Florida Supreme Court in Houser v. State, 474 So. 2d 1193 (Fla. 1985). Pursuant to the rule, a defendant may not be punished for a single homicide under two different statutes. Id. at 1196 (invalidating convictions for both DWI manslaughter and vehicular homicide); Linton v. State, 212 So. 3d 1100, 1103 (Fla. 5th DCA 2017) (finding single homicide rule prohibits dual convictions for first-degree murder with a weapon and fleeing or eluding causing serious injury or death when offenses involve same victim), review granted, No. SC17-2228, 2018 WL 1531453, *1 (Fla. Mar. 28, 2018), and review dismissed, No. SC18-471, 2018 WL 2316542, *1 (Fla. May 21, 2018); see also Daniel v. State, 271 So. 3d 1214, 1215 (Fla. 1st DCA 2019)¹ (finding single homicide rule prohibited convictions for both vehicular homicide and fleeing or eluding causing serious bodily injury or death); McCullough v. State, 230 So. 3d 586, 593 (Fla. 2d DCA 2017) (same).

Accordingly, we affirm the postconviction order with respect to grounds one, two, three, four, five, six, and seven, but reverse the summary denial of ground eight of Maisonet-Maldonado's motion, and remand for further proceedings. On remand, the trial court should affirm Maisonet-Maldonado's convictions for vehicular homicide (Counts V and VI), vacate the current judgments for fleeing and eluding causing serious injury or

¹ Notably, the First District, in Daniel, held that McKinney v. State, 51 So. 3d 645 (Fla. 1st DCA 2011), review denied, 95 So. 3d 213 (Fla. 2012), is no longer good law because it conflicted with the First District's holding in Crusaw v. State, 195 So. 3d 422 (Fla. 1st DCA 2016), and Crusaw, the later decision, controls. Daniel, 271 So. 3d at 1215 n.3 (citing R.J. Reynolds Tobacco Co. v. Marotta, 214 So. 3d 590, 604 (Fla. 2017) (noting that more recent decision overrides earlier decision where intradistrict conflict exists)).

death (Counts II and III), and enter judgments convicting Maisonet-Maldonado of the lesser included offense of fleeing or attempting to elude a law enforcement officer in violation of section 316.1935(3)(a), Florida Statutes (2008). See Linton, 212 So. 3d at 1103. The trial court shall also conduct further proceedings to resentence Maisonet-Maldonado in light of his modified convictions. Id.

We also certify the following question of great public importance to the Florida Supreme Court:

DOES THE "SINGLE HOMICIDE" RULE FOUND IN HOUSER V. STATE, 474 SO. 2D 1193 (FLA. 1985), PRECLUDE SEPARATE CONVICTIONS OF VEHICULAR HOMICIDE AND FLEEING AND ELUDING CAUSING SERIOUS INJURY OR DEATH THAT INVOLVE THE SAME VICTIM?

AFFIRMED, in part; REVERSED, in part; REMANDED, with directions; and QUESTION CERTIFIED.

ORFINGER and HARRIS, JJ., and JACOBUS, B.W., Senior Judge, concur.