

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

DAMIAN DAVID SANTIAGO,

Appellant,

v.

Case No. 5D17-3394

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 28, 2020

3.850 Appeal from the Circuit
Court for Orange County,
Marc L. Lubet, Judge.

Damian David Santiago, Indiantown, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona Beach,
for Appellee.

PER CURIAM.

Damian David Santiago appeals the partial denial of his motion seeking postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. We affirm.

Santiago was sixteen years old at the time he committed the offenses giving rise to the charges in this case. After Santiago pled guilty to the crime of second-degree murder with a firearm, the trial court sentenced him to thirty-five years in prison.

Through his postconviction motion, he challenged that sentence, arguing that the sentence violated the constitutional prohibition against cruel and unusual punishment. Further, he asserted entitlement to a full resentencing hearing and judicial review of his sentence. Granting the motion in part, the postconviction court amended the sentencing documents to allow for juvenile sentencing review hearings. However, the court denied Santiago's request for a new resentencing hearing and Santiago appealed.

In our original opinion, we held that it was error for the postconviction court to modify Santiago's sentence—i.e., providing for a review hearing—without also holding a resentencing hearing. Santiago v. State, 254 So. 3d 1125, 1126 (Fla. 5th DCA 2018). In doing so, we certified conflict with Pedroza v. State, 244 So. 3d 1128 (Fla. 4th DCA 2018).

Following the issuance of our opinion, we granted the State's motion to recall and stay the mandate pending the Florida Supreme Court's review of Pedroza. The Florida Supreme Court has now rendered a decision in Pedroza v. State, 291 So. 3d 541 (Fla. 2020), holding, among other things, that resentencing is not required for juvenile offenders unless they are serving a life sentence or its functional equivalent. 291 So. 3d at 549; cf. Gilchrist v. State, 44 Fla. L. Weekly D1787 (Fla. 5th DCA July 24, 2020) (interpreting Pedroza as so holding).

We determine that Santiago's thirty-five-year sentence does not meet that standard. See Pedroza, 291 So. 3d at 548–49; accord Gilchrist, 44 Fla. L. Weekly D1787. Accordingly, we withdraw our previous opinion and substitute the instant opinion in its

place. We affirm the postconviction court's order amending the sentence to provide for a review hearing and denying resentencing.

AFFIRMED.

ORFINGER, EDWARDS, and GROSSHANS, JJ., concur.