

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SHELTON JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D13-0366

Opinion filed June 18, 2013.

An appeal from the Circuit Court for Duval County.
Mallory D. Cooper, Judge.

Shelton Jackson, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Meredith Hinshelwood and Donna A. Gerace, Assistant Attorneys General, Tallahassee, for Appellee.

PER CURIAM.

This cause is before us on the appellant's Motion for Rehearing, Rehearing En Banc, Request for Written Opinion, and Motion to Certify an Issue to the Florida Supreme Court. We deny the Motion for Rehearing En Banc and the Motion to Certify an Issue to the Florida Supreme Court, but grant the Motion for

Rehearing and Request for Written Opinion, withdraw our previously issued opinion dated April 2, 2013, and substitute the following in its place.

The appellant filed a motion pursuant to Florida Rule of Criminal Procedure 3.850 challenging life sentences without the possibility of parole imposed upon him for non-homicide crimes committed when he was a juvenile. In Graham v. Florida, 130 S. Ct. 2011 (2010), the Supreme Court held that the constitutional prohibition on cruel and unusual punishment prevents a juvenile offender from being sentenced to life imprisonment without the possibility of parole for a non-homicide offense. The state argues that Graham recognized a limited exception when the offender has also been convicted and sentenced for a homicide in the same proceeding, as did in fact occur in the present case. However, this Court has unequivocally rejected that interpretation of Graham. See Johnson v. State, 38 Fla. L. Weekly D953 (Fla. 1st DCA Apr. 30 2013) (certifying conflict with Lawton v. State, 109 So. 3d 825 (Fla. 3d DCA 2013)); see also Akins v. State, 104 So. 3d 1173 (Fla. 1st DCA 2012).

We accordingly reverse the trial court's order summarily denying relief. We note, however, that the record indicates that the appellant's sentences may have been the result of a negotiated plea. If such is the case, the appellant would not be entitled to automatic resentencing. Rather, the state, at its option, can agree to the

resentencing or it can withdraw from the plea, placing the parties back into their pre-plea positions. See e.g., Smith v. State, 93 So. 3d 387 (Fla. 1st DCA 2012).

REVERSED and REMANDED for further proceedings.

CLARK, MARSTILLER, JJ., and BOLES, W. JOEL, ASSOCIATE JUDGE,
CONCUR.