

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D19-1908

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ROGER SMITH, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Duval County.  
Bruce Anderson, Jr., Judge.

June 3, 2020

ON MOTION FOR REHEARING

B.L. THOMAS, J.

Appellant seeks resentencing, arguing that his life sentence with a minimum mandatory of twenty-five years was illegal under *Miller v. Alabama*, 567 U.S. 460 (2012). On appeal, Appellant asserts that the trial court lacked jurisdiction to deny his motion because it had already granted the motion when it appointed counsel for resentencing.

Appellant's reliance on *Simmons v. State*, 274 So. 3d 468 (Fla. 1st DCA 2019), does not entitle him to relief. This Court has recently receded from *Simmons* and held that an order granting a 3.800(a) motion is not a final appealable order. *See Rogers v. State*, 45 Fla. L. Weekly D1069 (Fla. 1st DCA May 1, 2020) (holding that

the trial court has inherent authority to reconsider an order granting relief under rule 3.800(a) because the order is not final or appealable until resentencing has occurred). Thus, *Simmons* is no longer good law. However, the instant case doesn't turn on *Simmons* or *Rogers* because the lower court never rendered a written order granting resentencing. Appellant's claim that the trial court's order appointing counsel for Appellant was functionally equivalent to a final order granting resentencing is without merit. The trial court's order only appointed the public defender to represent Appellant in the instant case. It did not grant any relief or indicate that any relief would be granted. Thus, no final order or a functional equivalent had been rendered. Therefore, the trial court maintained jurisdiction to enter a final order denying resentencing.

Because the trial court had jurisdiction to rule on Appellant's motion and Appellant is not entitled to resentencing, we AFFIRM. Appellant's motion for a written opinion is GRANTED, and we withdraw our prior opinion. Appellant's motions for rehearing en banc and certification of question of great public importance are DENIED.

WOLF and MAKAR, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Andy Thomas, Public Defender, and Justin F. Karpf, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Tabitha R. Herrera, Assistant Attorney General, Tallahassee, for Appellee.