FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4506

JOSHUA LEVESQUE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Maureen Horkan, Judge.

August 17, 2020

PER CURIAM.

Appellant challenges the trial court's summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm.

Appellant was charged with first-degree murder for a crime he committed when he was seventeen years old. On March 25, 2004, Appellant pleaded guilty to the reduced charge of second-degree murder. Appellant was sentenced to fifty years in prison, with a twenty-five-year mandatory minimum term, to be followed by ten years of probation. Appellant argues that this sentence is unconstitutional because it violates *Miller v. Alabama*, 567 U.S. 460 (2012).

Appellant claims that he is entitled to resentencing because he was a minor at the time that he committed the offense and his sentence did not provide him with a review mechanism that allowed him the opportunity to demonstrate his maturity and rehabilitation to obtain early release. Appellant also argues that the length of his sentence is sufficient to warrant a sentence review at some point during his incarceration. However, we have held that under *Miller* "resentencing is not required where a homicide defendant's sentence is not a life sentence, a mandatory life sentence or a de facto life sentence." *Wagner v. State*, 285 So. 3d 412, 413 (Fla. 1st DCA 2019) (citing *Davis v. State*, 214 So. 3d 799 (Fla. 1st DCA 2017)). The Florida Supreme Court recently reached the same conclusion in *Pedroza v. State*, 291 So. 3d 541, 548 (Fla. 2020), in holding that *Miller* is not implicated unless the sentence "meets the threshold requirement of being a life sentence or the functional equivalent of a life sentence."

Here, Appellant's sentence for his homicide offense is not a life sentence, and his young age at the time of sentencing means that he has a reasonable probability of living long enough to be released. *See Williams v. State*, 197 So. 3d 569 (Fla. 2d DCA 2016) (holding that fifty-year sentence with a twenty-year mandatory minimum term was not a de facto life sentence). Thus, Appellant's sentence is not unconstitutional, and he is not entitled to resentencing or a sentencing review.

AFFIRMED.

B.L. THOMAS, OSTERHAUS, and BILBREY, JJ., concur.

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

Joshua Levesque, pro se, Appellant.

Ashley Moody, Attorney General, Tallahassee, for Appellee.