FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2482

JAMES CURTIS MALONE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Gilbert L. Feltel, Jr., Judge.

August 17, 2021

ROWE, C.J.

James Curtis Malone appeals an order denying his postconviction motion filed under Florida Rule of Criminal Procedure 3.850. Malone argues that he is entitled to resentencing under *Miller v. Alabama*, 567 U.S. 460 (2012), and *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016). We disagree and affirm.

Facts

In 1972, fifty-six-year-old W.J. and his eighty-eight-year-old aunt were brutally murdered. The perpetrator struck W.J. on the back of the head with an axe and stabbed W.J. in the temple with an ice pick. W.J.'s elderly aunt was also struck in the head with an axe. W.J.'s home was ransacked, with many items stolen. When

Malone was brought to the police station for questioning, he had blood on his shoes, was wearing W.J.'s jewelry, and was carrying W.J.'s wallet. When investigators later searched Malone's home, they found W.J.'s watch in Malone's bedroom. Malone was almost eighteen years old at the time of the murders.

Prosecutors charged Malone with two counts of first-degree murder. Following a jury trial in 1974, Malone was found guilty of both murders. The trial court sentenced Malone to consecutive terms of life imprisonment, with parole eligibility as to both counts. This Court affirmed his convictions and sentences. *See Malone v. State*, 324 So. 2d 671 (Fla. 1st DCA 1976).

In 2017, Malone moved for postconviction relief under rule 3.850(a)(1), arguing that he was entitled to resentencing under *Miller* and *Atwell* because he was a juvenile when he committed the murders. The trial court appointed a public defender to represent Malone, noting in the order that Malone was entitled to resentencing. Several months after the court appointed counsel, the Florida Supreme Court rendered its decisions in *State v. Michel*, 257 So. 3d 3, 6 (Fla. 2018), and *Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018), receding from *Atwell*. The State moved to stay any resentencing proceeding. But the trial court did not rule on the motion.

When the trial court still had not resentenced Malone in 2019, the State moved for the court to deny Malone's postconviction motion and to dismiss the resentencing hearing. The State argued that Malone was no longer entitled to resentencing because the supreme court receded from *Atwell* in *Michel*. Malone countered that he was entitled to resentencing based on the language in the trial court's order appointing a public defender. He asserted that the trial court could not rescind its own order finding that he was entitled to resentencing.

The trial court denied Malone's motion. The court found that while Malone was eligible for resentencing when he filed his motion, intervening case law required the court to deny the motion. Relying on *Franklin*, the court determined that Malone's life sentences were not illegal because they provided him with the possibility of parole. The court rejected Malone's argument that

the language in the order appointing a public defender required the court to proceed with the resentencing. Instead, the court relied on this Court's decision in *Rogers v. State*, 296 So. 3d 500 (Fla. 1st DCA 2020) (on motion for rehearing en banc), to conclude it had the authority to reconsider its position because resentencing had not yet occurred. Based on the changes in the law, the trial court found that Malone was not entitled to a new sentencing proceeding and denied the motion. This timely appeal follows.

Analysis

We review de novo a trial court's order summarily denying a postconviction motion. *Anderson v. State*, 303 So. 3d 596, 598 (Fla. 1st DCA 2020).

Malone advances three arguments for reversal. We address two and reject the third without further discussion.[1] First, he asserts that the trial court functionally granted his rule 3.850 motion when it stated in the order appointing counsel that he was entitled to resentencing. Thus, under *State v. Jackson*, 306 So. 3d 936, 942 (Fla. 2020), because the State had not appealed or sought rehearing of the order "granting" resentencing, the trial court could not reconsider its ruling. Second, Malone argues that denying him resentencing would result in a manifest injustice. Both arguments lack merit.

Malone is correct that when a trial court enters an order granting postconviction relief under rule 3.850, the order is final and "absent rehearing or appeal, brings an end to the

[1] Malone's third argument is that Florida's parole system is unconstitutional. He contends that the decisions in *Franklin* and *Michel* rejecting that very argument "were wrongly decided." We disagree. But even if we agreed with Malone's argument, we lack authority to disregard binding precedent of the Florida Supreme Court. *See Hoffman v. Jones*, 280 So. 2d 431, 434 (Fla. 1973) (observing that it would "create chaos and uncertainty" to allow a district court of appeal "to overrule controlling precedent of this Court").

postconviction proceeding."[2] *Id*. Once a trial court has rendered an order granting relief under rule 3.850, it may not revisit its ruling absent a motion for rehearing or appeal.[3] And so, the trial court's reliance on *Rogers* to conclude it had the authority to reconsider its ruling on Malone's rule 3.850 motion was misplaced. Even so, the trial court reached the right result. *See Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002) ("[T]he 'tipsy coachman' doctrine[ ] allows an appellate court to affirm a trial court that 'reaches the right result, but for the wrong reasons' so long as 'there is any basis which would support the judgment in the record.'" (quoting *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999))). This is because there was no order for the court to "reconsider."

The trial court never rendered a final, appealable order on Malone's postconviction motion. Although the order appointing the public defender included language that Malone was eligible for resentencing, the order was not an order granting resentencing or the functional equivalent of an order granting resentencing. This Court has rejected similar arguments at least twice. *See Cotton v.*

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[2] The State may appeal an order granting relief under rule 3.850. *See* Fla. R. App. P. 9.140(c)(1)(J); *see also* Fla. R. Crim. P. 3.850(k).

[3] In *Rogers*, this Court examined *Taylor v. State*, 140 So. 3d 526 (Fla. 2014), which held that an order granting in part and denying in part a rule 3.850 motion is a final order for purposes of appeal. *See* 296 So. 3d at 507–508. We concluded that *Taylor's* holding was limited and that such an order is appealable only as to the portion of the order denying relief. *See id*. But in *Jackson*, the supreme court disagreed with our analysis of *Taylor* and clarified that an order granting in part and denying in part a rule 3.850 motion is "final for purposes of appeal" in its entirety because it resolves all the defendant's claims. 306 So. 3d at 944. Even so, the supreme court recognized that "rule 3.800(a) differs considerably from rule 3.850" and declined to opine on the holding in *Rogers* that "the trial court has inherent authority to reconsider an order granting a rule 3.800(a) motion if resentencing has not occurred." *Id*. (quoting *Rogers*, 296 So. 3d at 504).

State, 300 So. 3d 1256, 1258 (Fla. 1st DCA 2020) (explaining that a postconviction court's "verbal grant of a motion for resentencing, if not reduced to writing" is not "the 'functional equivalent' of a final order"); *Smith v. State*, 299 So. 3d 536, 536 (Fla. 1st DCA 2020) (rejecting an argument that the postconviction court's "order appointing counsel for [defendant] was functionally equivalent to a final order granting resentencing"). As in those cases, the trial court here never rendered a final, appealable order on Malone's postconviction motion. *See* Fla. R. App. P. 9.020(h) (explaining that an order is rendered "when a signed, written order is filed with the clerk of the lower tribunal"); *see also* Fla. R. Crim. P. 3.850(k) ("An appeal may be taken to the appropriate appellate court only from the final order disposing of the motion. All final orders denying motions for postconviction relief shall include a statement that the defendant has the right to appeal **within 30 days of the rendition of the order**." (emphasis supplied)). For these reasons, the trial court could reconsider Malone's rule 3.850 motion and render an order denying him relief.

Malone also argues that denying him resentencing would result in a manifest injustice because other similarly situated *Atwell* defendants were resentenced before the Florida Supreme Court decided *Michel* and *Franklin*. We disagree. As this Court explained in *Melton v. State*, 304 So. 3d 375, 377 (Fla. 1st DCA 2020), "[t]he decisional law in effect at the time an appeal is decided governs the issues raised on appeal, even where there has been a change of law since the time of trial." (quoting *Wheeler v. State*, 344 So. 2d 244, 245 (Fla. 1977)). Malone's life sentence with the possibility of parole is not illegal under the law as it now stands. *See id*. The Florida Supreme Court held in *Michel* that juvenile offenders with life sentences with the possibility of parole after twenty-five years are not entitled to resentencing. *See* 257 So. 3d at 6–7. And it explained in *Franklin* that Florida's statutory parole process fulfills the requirement that juveniles be given a meaningful opportunity to be considered for release during their natural life. *See* 258 So. 3d at 1241. Malone concedes that his life sentences afford him the opportunity for parole review. Because Malone's sentences are legal and afford him the possibility of parole, the trial court's order denying his motion for resentencing does not result in a manifest injustice.

Finding no error by the trial court, we AFFIRM the order denying Malone's postconviction motion.

B.L. THOMAS and RAY, JJ., concur.

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

Jessica J. Yeary, Public Defender; Caitlyn Clibbon, Kathleen Pafford, and Glen P. Gifford, Assistant Public Defenders, Tallahassee, for Appellant.

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