FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2528

SHELTON JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Mark Borello, Judge.

December 29, 2021

B.L. THOMAS, J.

Shelton Jackson appeals the denial of a postconviction motion filed pursuant to rule 3.800(a) and 3.850. For the reasons outlined below, we affirm the denial.

In 1990, Appellant pleaded guilty to armed robbery, armed kidnapping, and first-degree murder. The trial court sentenced him to consecutive life sentences consistent with Appellant's agreement with the State.

Appellant previously argued that the life sentences for his non-homicide offenses were illegal under *Graham v. Florida*, 560 U.S. 48, 74 (2010). We reversed the trial court's order denying Appellant's 3.800 motion, and issued a mandate where we held that Appellant could be entitled to resentencing on his non-

homicide offenses. *Jackson v. State*, 187 So. 3d 853, 853–54 (Fla. 1st DCA 2013). However, this Court held that if Appellant's sentences were the result of a negotiated plea, the State could either agree to resentencing or withdraw its plea offer and the parties would proceed to trial. *Id.*

In 2017, Appellant filed the current motion for postconviction relief now on appeal. He argued he had a right to be resentenced on all counts, because he was a minor when he committed his offenses, and his sentences were illegal. He relied on *Atwell v. State*, 197 So. 3d 1040, 1050 (Fla. 2016), which held that a juvenile life sentence without the possibility of parole for a homicide offense violated the Eighth Amendment; *Miller v. Alabama*, 567 U.S. 460, 479 (2012), which held that it was unconstitutional to sentence juveniles who committed homicide offenses to mandatory life sentences without parole; and *Graham*, which held that it was unconstitutional to sentence juveniles who committed non-homicide offenses to life in prison. He also relied on this Court's previous mandate.

The trial court did not enter a dispositive order on the motion. Instead, it issued an order for a status conference to determine whether Appellant was entitled to resentencing.

While Appellant was awaiting a potential resentencing, the Florida Supreme Court receded from *Atwell* in *State v. Michel*, 257 So. 3d 3, 6–7 (Fla. 2018), holding there that the defendant's sentence of life with the possibility of parole after twenty-five years did not violate the defendant's constitutional rights. That court also decided *Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018), which held that Florida's statutory parole process fulfills the requirement that juveniles be given a meaningful opportunity for release during their natural life.

The State then argued that resentencing was not required because Appellant's sentence on his homicide offense was legal under *Michel*. Appellant argued in response that the trial court's decision whether to resentence him was controlled by *State v. Jackson*, 276 So. 3d 488 (Fla. 1st DCA 2019). Appellant argued that the trial court could not rescind its prior order calling for a

status conference to determine whether Appellant was entitled to resentencing.

Ultimately, the trial court held that Appellant was not eligible for resentencing on his homicide offense because *Atwell* was no longer controlling. But the trial court found that Appellant was still eligible for resentencing for his non-homicide offenses. As Appellant was granted relief on all matters except the homicide offense, only that issue is now before us.

Appellant argues that the trial court erred in denying resentencing on the homicide offense, because it had already functionally granted his motion to vacate his sentence. Thus, it lacked jurisdiction to reconsider its status-conference order and it would be a manifest injustice to deny him resentencing on that conviction. Appellant further argues that our holding in *State v. Jackson*, 276 So. 3d 488 (Fla. 1st DCA 2019), divested the trial court of jurisdiction to reconsider its prior status-conference order.

We reject these arguments. The trial court's order calling for a status conference to determine Appellant's eligibility for resentencing was not the functional equivalent of an order granting resentencing. *See Hall v. State*, 46 Fla. L. Weekly D2624 (Fla. 1st DCA Dec. 8, 2021). In any event, a trial court retains jurisdiction where an order on a postconviction motion is not final and where resentencing is not complete. *See Rogers v. State*, 296 So. 3d 500, 507–09 (Fla. 1st DCA 2020) (holding that a trial court retains jurisdiction over a case between granting a rule 3.800 motion and the subsequent resentencing); Fla. R. Crim. P. 3.850(f)(4) ("An order that does not resolve *all the claims* is a nonfinal, nonappealable order . . . .") (emphasis added).

Even so, Appellant argues that the Florida Supreme Court's recent holdings in *State v. Okafor*, 306 So. 3d 930 (Fla. 2020) and *State v. Jackson*, 306 So. 3d 936 (Fla. 2020) overturned our holding in *Rogers* and prevented the trial court from reconsidering its order granting a status conference on resentencing. However, Appellant's reliance on *Okafor* and *Jackson* is inapposite. In *Okafor*, the Florida Supreme Court held that when an appellate court's mandate vacated a sentence and ordered a remand "there is no sentence until the [trial] court imposes a new one." *Okafor,*

306 So. 3d at 933. In *Jackson*, the Florida Supreme Court addressed a matter where a postconviction court ordered a new penalty phase and vacated the defendant's death sentence, after he sought relief under rule 3.851. 306 So. 3d at 938–39. The Court held that a postconviction order vacating a sentence and ordering resentencing should be construed as a final judgment. *Id.* at 942–43.

Both *Okafor* and *Jackson* are distinguishable from this case. Unlike the mandates in those cases, this Court's mandate in *Jackson v. State,* 187 So. 3d 853 (Fla. 1st DCA 2013), did not vacate Appellant's homicide sentence or order resentencing. Instead, the mandate directed the trial court to conduct further proceedings on Appellant's *non*-homicide offenses, as Appellant's sentences resulted from a negotiated plea agreement. Indeed, our decision specifically noted that Appellant was *not* necessarily entitled to resentencing.

We also reject Appellant's argument that the law of the case established in *State v. Jackson*, 276 So. 3d 488 (Fla. 1st DCA 2019) entitles him to resentencing. There, we dismissed a State appeal of the trial court's order denying the State's initial motion to rescind the trial court's previous order, because the order was not appealable and this Court lacked jurisdiction. This Court also expressly receded from *State v. Jackson*, 276 So. 3d 488 (Fla. 1st DCA 2019) and *Simmons v. State*, 274 So. 3d 468 (Fla. 1st DCA 2019) in *Rogers v. State*, 296 So. 3d 500 (Fla. 1st DCA 2020). Thus, this Court never issued any mandate that vacated Appellant's homicide sentence and there was no law of the case entitling Appellant to resentencing. The trial court had not completed its judicial labor, because the State had a right to reconsider its plea agreement with Appellant and no resentencing had occurred.

Even assuming, *arguendo*, that the trial court's denial of resentencing on the first-degree murder conviction was contrary to any mandate from this Court, Appellant's argument still lacks merit because of intervening changes in the law following the mandate. The Florida Supreme Court held that there is an exception to law of the case doctrine "when there has been an intervening change in the law underlying the decision." *Nixon v. State,* No. SC20-48, 2021 WL 3778705, at *3 (Fla. Aug. 26, 2021)

(quoting *Kathrein v. City of Evanston, Ill.*, 752 F.3d 680, 685 (7th Cir. 2014)). In *Nixon*, the Florida Supreme Court had previously instructed the trial court to determine if an evidentiary hearing was necessary to evaluate whether the defendant was intellectually disabled, by applying retroactively the standard discussed in *Hall v. Florida*, 572 U.S. 701 (2014). However, during the intervening period between the remand and the evidentiary hearing on Nixon's disability claim, the Florida Supreme Court receded from the prior controlling law regarding the retroactive application of the standard discussed in *Hall*. 2021 WL 3778705, at *1–2. After the trial court denied Nixon's intellectual disability claim, Nixon appealed again. He argued that the law of the case established under the Florida Supreme Court's earlier decision required the trial court to retroactively apply the *Hall* standard when evaluating Nixon's intellectual disability claim. *See id.* at *2–3. The Florida Supreme Court disagreed, holding that the law of the case doctrine "must give way where there has been a change in the fundamental controlling legal principles." *Id.* at *3 (citations omitted).

Likewise, this Court has held that when a mandate or holding from an appellate court has been later overruled, before a trial court's judicial labor is complete, the trial court has the authority to disregard that order and change its ruling to comply with the new legal standards. *See Rembert v. State*, 300 So. 3d 791, 794 (Fla. 1st DCA 2020) (holding that a trial court can disregard a mandate from an appellate court when it is "undoubtedly certain that the basis for that mandate has been subsequently overruled before the trial court can comply with the mandate"). For the reasons outlined below, Appellant's life sentence for his homicide offense complies with current legal standards, because the controlling case law changed during this case's proceeding. *See Michel*, 257 So. 3d at 6–7.

Indeed, in *Michel*, 257 So. 3d 3 at 7, and *Franklin*, 258 So. 3d at 1241, the Florida Supreme Court held that sentences like Appellant's are lawful, because Appellant may be considered for early release from his life sentence, after his 25-year mandatory minimum has passed, and this process will be subject to judicial review. These elements comply with *Michel* and *Franklin*, and his sentence is not illegal.

Nor are we persuaded that denying the resentencing would result in a manifest injustice. "[R]esentencing is a de novo proceeding in which the decisional law effective at the time of the resentencing applies . . . ." *State v. Fleming*, 61 So. 3d 399, 400 (Fla. 2011). Thus, it was not error and not manifestly unjust for the trial court to deny Appellant resentencing based on the Florida Supreme Court's decisions in *Michel* and *Franklin*.

AFFIRMED.

ROWE, C.J., and RAY, J., 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 Megan Long, Assistant Public Defenders, Tallahassee, for Appellant.

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