FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-123

CHAVIS WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
R. Anthony Salem, Judge.

October 12, 2022

PER CURIAM.

Appellant Chavis Dewayne Williams appeals the denial of a rule 3.800(a) motion. On January 26, 2010, a 15-year-old female reported being raped earlier that day by a man known as Dewayne. She claimed that he gave her an alcoholic drink and then she only remembered waking up in his bed. Sheriff's Office records indicate the incident was reported on January 26, 2010, at 6:40 p.m. The victim was transported to University of Florida Health, and a sexual assault kit was utilized during which a vaginal swab was obtained. On April 30, 2010, the Florida Department of Law Enforcement determined that semen from the vaginal swab matched the DNA of Appellant. The State prosecuted Appellant for a second-degree felony violation of the sexual battery law, section 794.011, Florida Statutes.

In his motion, filed in November 2021, Appellant asserted that, because the statute of limitations expired on the charged offense, his sentence should be vacated and his conviction overturned. He alleged that the offense was committed on January 26, 2010, and that an investigation of alleged sexual assault was conducted that same day. Appellant argued that he was not arrested until March 20, 2019—over nine years later. He asserted that, under section 775.15, Florida Statutes, the prosecution of any felony, other than a first-degree felony, must be commenced within three years after the offense was committed. He argued that other exceptions in the statute did not cure the untimely prosecution.

In December 2021, the lower court summarily denied the motion, finding that, under section 775.15(16)(a), the statute of limitations was not violated because Appellant was charged with sexual battery and his identity was established through DNA evidence.

On appeal, Appellant argues that the judgment and sentence are not in the record, and nothing exists in the record to support the legality of the sentence. He does not address the applicability of section 775.15(16).

The State argues the claim was not cognizable under rule 3.800(a). Also, under either section 775.15(16)(a) or section 775.15(13)(a), the statute of limitations had not expired. The latter provision allows prosecution to commence "at any time" if the offense was reported within 72 hours after its commission.

As the State correctly notes, Appellant's claim was not cognizable under rule 3.800(a). *See Riviere v. State*, 965 So. 2d 845 (Fla. 2d DCA 2007). Nonetheless, Appellant's motion would have been timely under rule 3.850, and the lower court denied it on the merits. The lower court properly denied relief.

Section 775.15(2)(b), Florida Statutes, provides that prosecution of a second-degree felony must be commenced within three years of the offense except as otherwise provided in this section. Section 775.15(16) extends the statute of limitations for various offenses—including sexual battery. It allows for a prosecution to be commenced *at any time* after the identity of the

accused is established through DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused. This provision does not apply to offenses already barred from prosecution before July 1, 2006. Because the prosecution of Appellant's offense—an offense committed in January 2010—was not already barred before July 1, 2006, this statutory provision applied. *See Bryson v. State*, 42 So. 3d 852, 854 (Fla. 1st DCA 2010) ("[T]he plain language of this statute provides that Appellant could have been prosecuted at any time after September 1, 2006, when FDLE established a close link between Appellant's DNA and that of the blood sample taken from the crime scene."). Under this provision, the statute of limitations would not have expired. However, the record on appeal does not indicate whether a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA was preserved and available for testing by Appellant. As a result, the lower court's reliance on section 775.15(16) is not supported by the record.

Nevertheless, the lower court's denial of relief was appropriate based on sections 775.15(13)(a) and (13)(c). Section 775.15(13)(a) provides that if "the offense is a first or second degree felony violation of s. 794.011, and the offense is reported within 72 hours after its commission, the prosecution for such offense may be commenced at any time." Because the sexual battery in this case was reported the same day it took place, the statute of limitations had not expired. *See Shimon v. R. B.*, 318 So. 3d 580, 582 n.1 (Fla. 3d DCA 2021) ("Because R.B. reported the battery within 72 hours, there is no applicable statute of limitations and the prosecution 'may be commenced at any time.' § 775.15(13)(a).").

Section 775.15(13)(c) provides: "If the offense is a violation of s. 794.011 and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010." The victim was under 16 years old at the time of the offense in January 2010, and the three-year statute of limitations had not expired on or before

July 1, 2010. Consequently, the State was authorized to commence its prosecution of Appellant at any time.

The State's prosecution of Appellant was not barred by the statute of limitations.

AFFIRMED.

B.L. THOMAS, MAKAR, and M.K. THOMAS, JJ., concur.

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

Chavis Williams, pro se, Appellant.

Ashley Moody, Attorney General, and Zachary F. Lawton, Assistant Attorney General, Tallahassee, for Appellee.