

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

JAVIER BELMONTES LOPEZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-3247

[April 16, 2014]

ON MOTION FOR REHEARING AND CLARIFICATION

PER CURIAM.

We grant appellant's motion for rehearing and clarification of this court's March 5, 2014 opinion and substitute the following in its place.

The defendant appealed from a conviction and sentence for attempted second degree murder with a firearm as a lesser included offense of attempted first degree murder with a firearm. This court affirmed. *Lopez v. State*, 55 So. 3d 707 (Fla. 4th DCA 2011). Our affirmance was based on our opinion in *Williams v. State*, 40 So. 3d 72 (Fla. 4th DCA 2010) ("*Williams I*"). *Williams I* held that the giving of the standard jury instruction on attempted voluntary manslaughter was not fundamental error in a prosecution for attempted first degree murder in which the defendant was convicted of the lesser included offense of attempted second degree murder.

The defendant petitioned for review in the Florida Supreme Court. While the petition was pending, the Florida Supreme Court quashed this court's opinion in *Williams I*. *Williams v. State*, 123 So. 3d 23, 30 (Fla. 2013) ("*Williams II*"). The Court held:

[A] trial court commits fundamental error in giving the standard jury instruction on attempted manslaughter by act where the defendant is convicted of a crime no more than one step removed from the improperly instructed offense.

Id. at 27. The Court then, by order, accepted jurisdiction of this case, quashed this court's opinion, and remanded for reconsideration upon application of its opinion in *Williams II*. See *Lopez v. State*, No. SC11-502 (Fla. Jan. 24, 2014).

In light of *Williams II*, we hold that the trial court committed fundamental error in giving the standard jury instruction on attempted manslaughter by act. We reverse and remand for a new trial on the charge of attempted second degree murder with a firearm. The trial court also should consider a revised scoresheet and resentencing on any remaining counts if the outcome of the proceedings on remand would result in a recalculated sentencing scoresheet.

Reversed and remanded for proceedings consistent with this opinion.

CIKLIN, FORST and KLINGENSMITH, JJ., concur.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert E. Belanger, Judge; L.T. Case No. 562008CF000786A.

Carey Haughwout, Public Defender, and James W. McIntire, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Daniel P. Hyndman, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.