

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JASON DENNIS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D13-1045

[March 29, 2017]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Andrew L. Siegel, Judge; L.T. Case No. 92-15221CF10A.

Carey Haughwout, Public Defender, and Paul E. Petillo, Assistant Attorney General, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We reverse the order denying appellant's motion for postconviction relief and remand for resentencing pursuant to *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016). Appellant is entitled to be resentenced pursuant to the sentencing provisions enacted in Chapter 2014–220, Laws of Florida. *Id.* at 1050; *Michel v. State*, 204 So. 3d 101 (Fla. 4th DCA 2016) (certifying conflict with *Stallings v. State*, 198 So. 3d 1081 (Fla. 5th DCA 2016), and *Williams v. State*, 198 So. 3d 1084 (Fla. 5th DCA 2016)).

Appellant's claim that his sentence for the non-homicide count violates *Graham v. Florida*, 560 U.S. 48 (2010), was not raised in the motion filed below and may not be raised for the first time in this appeal. *Atwell*, 197 So. 3d at 1043, n.1. Appellant may raise this claim through a proper motion filed in the trial court following remand.

Reversed and remanded for resentencing.

GROSS, TAYLOR and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.