

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

MICHAEL KENNETH SIMS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-5040

[June 9, 2010]

PER CURIAM.

Appellant was convicted of DUI manslaughter and sentenced to 15 years in prison with a four-year mandatory minimum. As the state concedes, imposition of the mandatory minimum sentence was error. Appellant's sentence was controlled by the law in effect at the time of his offense. *See Larkins v. State*, 739 So. 2d 90, 96 n.5 (Fla. 1999). At the time appellant was sentenced in 2008, the statute required a four-year mandatory minimum. *See* § 316.193(3)(c)3., Fla. Stat. (2008). However, in February 2007, the time of the offense in this case, the statute did not impose a mandatory minimum. *See* § 316.193(3)(c)3., Fla. Stat. (2006). The legislature amended the law in 2007 to provide for a mandatory minimum sentence. Ch. 2007-211, § 3, Laws of Fla. The change did not go into effect until July 1, 2007, approximately 5 months after appellant committed the underlying crime. *Id.* § 5.

On the remaining issue, we detect no fundamental error in the prosecutor's closing argument. The statements appellant points to on appeal were either fair comments on the evidence or reasonable inferences that could be drawn from it.

We affirm the conviction and remand to the circuit court for resentencing.

GROSS, C.J., STEVENSON and CIKLIN, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Larry Schack, Judge; L.T. Case No. 562007CF003898A.

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

Bill McCollum, Attorney General, Tallahassee, and James J. Carney, Senior Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.