

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

GUICHARD JEAN-BAPTISTE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-4958

[December 21, 2011]

MAY, C.J.

The defendant appeals his conviction for sexual battery on a person under twelve by a person under the age of eighteen, and his life sentence. We find no merit in the issues raised concerning his conviction, but reverse his life sentence. We remand the case to the trial court for resentencing.

Recently, the United States Supreme Court held that a life sentence without the possibility of parole for a non-homicide crime constitutes cruel and unusual punishment for a defendant under the age of eighteen at the time the crime is committed. *Graham v. Florida*, 130 S. Ct. 2011, 2033–34 (2010). “A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.” *Id.* at 2034.

Here, the defendant was sixteen at the time of the crime. His life sentence violates the Eighth Amendment of the United States Constitution and must be reversed. *See Cunningham v. State*, No. 4D09-2737, 2011 WL 5554540 (Fla. 4th DCA Nov. 16, 2011).

The conviction is affirmed, but the life sentence is reversed and the case is remanded for resentencing.

STEVENSON and CIKLIN, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert E. Belanger, Judge; L.T. Case No. 562007CF002603A.

Jennifer R. Kuczler, Fort Pierce, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.