

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

LUIS ALFARO,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D16-5013
	)	2D17-1653
STATE OF FLORIDA,	)	
	)	<u>CONSOLIDATED</u>
	)	
Appellee.	)	
_____	)	

Opinion filed December 27, 2017.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Hillsborough County; Ashley B. Moody,  
Judge.

Appellant, Luis Alfaro, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, for Appellee.

SILBERMAN, Judge.

This is a consolidated appeal from the summary denial of two motions for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.800(a). In both cases, Luis Alfaro asserted that the concurrent thirty-year sentences he received for several armed robberies and attempted armed robberies he committed as a juvenile are unconstitutional under Graham v. Florida, 560 U.S. 48 (2010). Based on recent

developments in the law interpreting Graham, we conclude that the postconviction court erred in denying relief.

The postconviction court initially denied relief based on its conclusion that Alfaro's thirty-year sentences did not constitute de facto life sentences and were therefore not illegal under Graham. The supreme court subsequently issued its decision in Kelsey v. State, 206 So. 3d 5, 10 (Fla. 2016), expressly stating that term-of-years sentences do not have to constitute de facto life sentences in order for Graham to apply. Alfaro filed a renewed motion for postconviction relief asserting that he was entitled to resentencing under Kelsey. The postconviction court again denied relief, concluding that Kelsey only applied to juvenile offenders like Kelsey who initially received life sentences but had been resentenced to a term of years under Graham.

After the postconviction court denied Alfaro's second rule 3.800(a) motion, the supreme court issued an opinion clarifying that Kelsey applies to all juveniles who have been sentenced to term-of-year sentences of more than twenty years in prison but who would not have the opportunity for judicial review as provided in chapter 2014-220, Laws of Florida. Johnson v. State, 215 So. 3d 1237, 1239 (Fla. 2017). The court concluded that under Graham a juvenile nonhomicide offender's term-of-years sentence must include a meaningful opportunity for early release based on a demonstration of rehabilitation and maturity. Id. at 1243. This court has applied that rationale to a juvenile defendant who received concurrent sentences of thirty years in prison followed by ten years' probation even though he had not been resentenced under Graham. See Mosier v. State, No. 2D16-5457, 2017 WL 4557832, at \*1 (Fla. 2d DCA Oct. 13, 2017) (relying on Johnson to find a juvenile offender's sentence illegal under Graham).

Accordingly, we reverse the orders denying postconviction relief and remand for Alfaro to be resentenced as provided in Mosier.

Reversed and remanded with directions.

NORTHCUTT and CRENSHAW, JJ., Concur.