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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA, Appellant, v. JUAN CARLOS MORALES, DOC #R67627, Appellee.	)	Case No. 2D18-3428

Opinion filed May 27, 2020.

Appeal from the Circuit Court for Pinellas County; Philip J. Federico and Joseph A. Bulone, Judges.

Ashley Moody, Attorney General, Tallahassee, and Bilal Ahmed Faruqui, Assistant Attorney General, Tampa; and Chelsea N. Simms, Assistant Attorney General, Tampa, (substituted as counsel of record) for Appellant.

Howard L. Dimmig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellee.

ROTHSTEIN-YOUAKIM, Judge.

The State appeals the sentence imposed on resentencing after the trial court granted Juan Carlos Morales's motion pursuant to Florida Rule of Criminal

Procedure 3.800(a) to correct an illegal sentence. Based on then-governing precedent, the trial court correctly granted the motion. Nonetheless, based on Pedroza v. State, 45 Fla. L. Weekly S93 (Fla. Mar. 12, 2020), which was decided while this appeal was pending, we must reverse. See Lowe v. Price, 437 So. 2d 142, 144 (Fla. 1983) ("Decisional law and rules in effect at the time an appeal is decided govern the case even if there has been a change since time of trial." (citing Wheeler v. State, 344 So. 2d 244 (Fla. 1977))).

Morales was convicted of kidnapping with intent to harm or terrorize, see § 787.01(1)(a)(3), Fla. Stat. (2008), and was sentenced to thirty years' prison. He committed the offense in September 2008, when he was seventeen years old.

In 2017, Morales moved pursuant to rule 3.800(a) to correct his assertedly illegal sentence. The trial court granted the motion, vacated his sentence, and, in August 2018, resentenced him to twenty years' imprisonment. Thereafter, the State timely filed its notice of appeal.[1]

In his rule 3.800(a) motion, Morales argued that his thirty-year sentence was unconstitutional under Graham v. Florida, 560 U.S. 48 (2010) (holding that a juvenile nonhomicide offender sentenced to life without parole must be given a meaningful opportunity to obtain early release based upon demonstrated maturity and

[1]Morales argues that the notice of appeal was untimely because the State did not file it within fifteen days of the court's rendition of the order granting his rule 3.800(a) motion but instead filed it within fifteen days of rendition of the amended sentence. Morales is incorrect. Cf. Morgan v. State, 45 Fla. L. Weekly D791, D793 (Fla. 2d DCA Apr. 3, 2020) ("We continue to hold that an order granting a rule 3.800(a) motion is not a final appealable order."); Fla. R. App. P. 9.140(c) (providing for State appeal of orders granting relief under Florida Rules of Criminal Procedure 3.801, 3.850, 3.851, or 3.853, but omitting mention of rule 3.800).

rehabilitation), as interpreted and applied by subsequent Florida cases, including, among others, Henry v. State, 175 So. 3d 675, 680 (Fla. 2015) (holding that a juvenile's ninety-year sentence was unconstitutional under Graham because it did not afford him a meaningful opportunity to obtain early release during his natural life); Kelsey v. State, 206 So. 3d 5, 11 (Fla. 2016) (holding that a juvenile's concurrent forty-five-year sentences were unconstitutional "not because of the length of his sentence, but because it did not provide him a meaningful opportunity for early release" during his natural life); Johnson v. State, 215 So. 3d 1237, 1241-43 (Fla. 2017) (holding that a juvenile's 100-year sentence did not provide him with a meaningful opportunity for early release during his natural life and that eligibility for gain time was not a valid consideration); and Mosier v. State, 235 So. 3d 957, 957-58 (Fla. 2d DCA 2017) (holding that a juvenile's concurrent thirty-year sentences were unconstitutional under Graham as interpreted by Kelsey and Johnson because his sentences did not provide a meaningful opportunity for early release).[2]

On appeal, the State contends that Graham only applies to cases in which the juvenile was actually sentenced to life or received a "de facto" life sentence. Stated another way, an original term-of-years sentence that does not amount to a de facto life sentence does not violate Graham. The State recognizes that its position is inconsistent with Mosier and with three more-recent opinions, see Cuevas v. State, 241 So. 3d 947 (Fla. 2d DCA 2018); Blount v. State, 238 So. 3d 913 (Fla. 2d DCA 2018); and Alfaro v. State, 233 So. 3d 515 (Fla. 2d DCA 2017), but it contends that these opinions incorrectly applied the supreme court's decisions in Kelsey and Johnson.

[2]Our presentation of these cases in chronological order is intentional.

While this appeal was pending, the supreme court decided Pedroza, in which it recognized the "confusing language and dicta" in Henry, Kelsey, and Johnson; receded from Johnson; and disapproved Cuevas, Blount, Mosier, and Alfaro "to the extent they hold that resentencing is required for all juvenile offenders serving a sentence longer than twenty years without the opportunity for early release based on demonstrated maturity and rehabilitation." 45 Fla. L. Weekly at S94-95. Pedroza, therefore, validates the State's position here: Morales's original sentence was not illegal, and he was not entitled to be resentenced.

Accordingly, we reverse the sentence imposed on resentencing and remand with directions to reinstate Morales's original thirty-year sentence.

Reversed and remanded with directions.

SILBERMAN and LUCAS, JJ., Concur.