

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DANTE R. MORRIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-2796

October 27, 2021

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Polk County; William Sites, Judge.

Howard L. Dimmig II, Public Defender and Pamela H. Izakowitz, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee and Linsey Sims-Bohnenstiehl, Tampa, for Appellee.

PER CURIAM.

Dante R. Morris appeals the trial court's order rescinding its "order on remand," which granted Mr. Morris a new sentencing

hearing, and reinstating its order denying Mr. Morris' motion filed under Florida Rule of Criminal Procedure 3.800(b). The State has conceded error. We reverse the trial court's order and remand for resentencing.

Mr. Morris asserted in his motion that he was entitled to resentencing under chapter 2014-220, Laws of Florida. The trial court denied his motion, and we affirmed. *Morris v. State*, 206 So. 3d 154, 154 (Fla. 2d DCA 2016). Mr. Morris sought review in the Florida Supreme Court, which reversed our mandate and remanded for resentencing. *Morris v. State*, 246 So. 3d 244, 245 (Fla. 2018). In August 2018, we issued our mandate adopting the supreme court's mandate and reversing Mr. Morris's sentence and remanding for further proceedings. As a result, the trial court ordered that Mr. Morris be resentenced.

Before the resentencing hearing occurred, the trial court stayed the proceedings pending the outcome of *Pedroza v. State*, 291 So. 3d 541 (Fla. 2020). After *Pedroza* was decided, the trial court concluded that Mr. Morris was no longer entitled to resentencing, and it granted the State's motion to rescind its order granting resentencing. Relying on our decision in *Marshall v. State*,

313 So. 3d 671 (Fla. 2d DCA 2019), the postconviction court did not follow our mandate and declined to resentence Mr. Morris. In *Marshall*, we denied the petitioner's motion to enforce our mandate directing resentencing because an intervening supreme court decision established that our prior opinion was no longer correct. *Id.* at 672. We receded from *Marshall* in *Howard v. State*, 322 So. 3d 134 (Fla. 2d DCA 2021), explaining that once a mandate ordering resentencing issues, the "original sentence is now a nullity" and cannot be recalled after 120 days have lapsed. *Id.* at 137. Regardless of whether there has been intervening case law, the judgment ordering resentencing "is final and no longer subject to reconsideration." *State v. Okafor*, 306 So. 3d 930, 935 (Fla. 2020).

Mr. Morris is entitled to resentencing. As explained in *Howard*, however, Mr. Morris "may have won a pyrrhic victory because 'the decisional law effective at the time of the resentencing applies.' Hence, upon resentencing, Mr. [Morris] may yet receive the same sentence." 322 So. 3d at 138 (quoting *Croft v. State*, 295 So. 3d 307, 309 (Fla. 2d DCA 2020)).

Reversed and remanded.

CASANUEVA, ROTHSTEIN-YOUAKIM, and STARGEL, JJ., Concur.

Opinion subject to revision prior to official publication.