DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LAISHA L. LANDRUM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-3480

November 9, 2022

Appeal from the Circuit Court for Hillsborough County; Christopher Sabella, Judge.

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

Ashley Moody, Attorney General, Tallahassee, and Jonathan P. Hurley, Assistant Attorney General, Tampa, for Appellee.

SMITH, Judge.

Laisha Landrum appeals her sentence after the resentencing court determined that she was subject to a life sentence with

judicial review of that sentence after twenty-five years. *See* §§ 775.082(3)(a)5, 921.1402(2)(b), Fla. Stat. (2020). Because we agree that it was error for the resentencing court to make the finding that Ms. Landrum intended or attempted to kill the victim, we reverse Ms. Landrum's life sentence and remand for resentencing. As to all other issues raised by Ms. Landrum, we affirm without comment.

As relevant to our examination of the new sentence, the undisputed facts of this case are that Ms. Landrum, who was sixteen at the time of the offense, and her live-in boyfriend beat the victim with various objects until the victim was presumed dead. They then left the body of the victim and the collection of objects used in the attack—a hammer, a boombox, and a pot—in a dumpster. The only object Ms. Landrum admitted to striking the victim with was the pot. The victim was discovered in the dumpster and died a few days later as a result of her injuries. Due to the nature of the combined attack, the medical examiner could not attribute the cause of death to any single blow or particular object.

At trial the jury was asked to determine whether Ms. Landrum committed second-degree murder with a deadly weapon. The jury was also instructed on a principal theory. The jury was not

required to indicate whether its verdict of guilty for the second-degree murder offense was based on Ms. Landrum's having committed it as a principal or not. Nor was it asked to determine whether Ms. Landrum actually killed, intended to kill, or attempted to kill the victim.

Ms. Landrum was convicted of second-degree murder with a deadly weapon and sentenced to life in prison without the possibility of parole.[1] Although her original convictions and sentences were affirmed, this court subsequently certified a question of great public importance to the Florida Supreme Court regarding Ms. Landrum's life sentence as part of its review of the denial of her motion to correct illegal sentence filed under Florida Rule of Criminal Procedure 3.800(a). *Landrum v. State*, 163 So. 3d 1261, 1261 (Fla. 2d DCA 2015), *quashed*, 192 So. 3d 459 (Fla. 2016). The Florida Supreme Court, in answering the certified question, directed that Ms. Landrum be resentenced under sections 775.082 and 921.1401 and .1402, Florida Statutes (2014).

[1] Ms. Landrum was also convicted of tampering with evidence, but that conviction and sentence is not at issue within this appeal.

Upon remand for resentencing, the question of whether Ms. Landrum actually killed, intended to kill, or attempted to kill the victim, necessarily affected the determination of when she is entitled to review of her ultimate sentence. § 775.082(3)(a)5. If Ms. Landrum did actually kill, intend to kill, or attempt to kill the victim, she would be entitled to a review of her sentence after twenty-five years. §§ 775.082(3)(a)5.a, 921.1402(2)(b). Whereas if Ms. Landrum did not actually kill, intend to kill, or attempt to kill the victim, she would be entitled to a review of her sentence after fifteen years. §§ 775.082(3)(a)5.b, 921.1402(2)(c).

The law is clear: the jury is required to determine whether a defendant "actually killed, intended to kill, or attempted to kill the victim." *Williams v. State*, 242 So. 3d 280, 288 (Fla. 2018) (citing *Alleyne v. United States*, 570 U.S. 99, 115, 133 (2013)). This is not a finding that can be made by the sentencing court. *Id.*

In the instant case, the resentencing court acknowledged that the jury had not made the necessary finding as to whether Ms. Landrum actually killed, intended to kill, or attempted to kill the

victim, which the court recognized was "an *Alleyne* violation."[2] But

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[2] In its Sentencing Order, the resentencing court stated:

> The Court recognizes that because "a finding of actual killing, intent to kill, or attempt to kill 'aggravates the legally prescribed range of allowable sentences' . . . by . . . lengthening the time before which a juvenile offender is entitled to a sentence review from fifteen to twenty-five years, this finding is an 'element' of the offense which *Alleyne* [*v. U.S.*, 570 U.S. 99 (2013)] requires be submitted to a jury and found beyond a reasonable doubt." *Williams v. State*, 242 So. 3d 280, 288 (Fla. 2018) (internal citation omitted).
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> Initially, the Court finds that an *Alleyne* violation occurred in the instant case with respect to this necessary finding. Specifically, the Court finds that because the jury used a verdict form that did not have an interrogatory indicating whether Defendant "actually killed, intended to kill, or attempted to kill the victim" in conjunction with the fact that the jury was instructed on the principal theory, there is no clear jury finding as to whether Defendant actually killed, intended to kill, or attempted to kill the victim in this case.
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> However, an *Alleyne* violation is subject to a harmless error analysis. *Id.* at 289. In performing the analysis, "the applicable question in evaluating whether an *Alleyne* violation is harmful . . . is whether the failure to have the jury make the finding as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim contributed to [the] sentence—stated differently, whether the record demonstrates beyond a reasonable doubt that a rational jury would have found the juvenile offender actually killed, intended to kill, or attempted to kill the victim." *Id.* at 290.
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> Based upon a review of the trial transcript, the Court finds the *Alleyne* violation is harmless in the instant case as the record demonstrates beyond a reasonable doubt that a rational jury would have found

instead of simply sentencing Ms. Landrum to life with review of that sentence after fifteen years in accordance with section 921.1402(2)(c), the resentencing court conducted its own review of the record, made the finding that a rational jury would have found that Ms. Landrum actually killed, intended to kill, or attempted to kill the victim, and then sentenced Ms. Landrum to life with review after twenty-five years pursuant to section 921.1402(2)(b).

We acknowledge that there is language in the *Williams* opinion that instructs that an *Alleyne* violation could be deemed harmless if "the record demonstrates beyond a reasonable doubt that a rational jury would have found the juvenile offender actually killed, intended to kill, or attempted to kill the victim." *Williams*, 242 So. 3d at 290. But we join our sister courts in the Third and Fifth Districts who have explained "that harmless error is the standard that is applicable in the reviewing court; it is not the standard employed by the trial court during resentencing." *See Manago v. State*, 317 So. 3d 1192, 1194 (Fla. 5th DCA 2021) (quoting *Green v. State*, 314 So. 3d 611, 614 (Fla. 3d DCA 2020)). Here, the resentencing court

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that Defendant either intended or attempted to kill the victim.

erred in considering the record to find that a rational jury would have found that Ms. Landrum actually killed, intended to kill, or attempted to kill the victim, thereby creating its own concurrent *Alleyne* violation. We also agree with the Fifth District's sentiment that "[e]ven if the error could be considered harmless error . . . it is not appropriate for a [trial] court to commit error simply because it might be found to be harmless." *Manago*, 317 So. 3d at 1194 (first alteration in original) (quoting *United States v. Salery*, 119 F. Supp. 2d 1268, 1272 n.3 (M.D. Ala. 2000)). Pursuant to *Williams*, once the resentencing court acknowledged there was no jury finding that would support a sentence under section 921.1402(2)(b), it was required to sentence Ms. Landrum according to section 921.1402(2)(c).

Accordingly, we reverse and remand for a de novo resentencing[3] pursuant to 775.082(3)(a)5.a, with consideration of the section 921.1401 factors and with directions to specifically

[3] *See Puzio v. State*, 320 So. 3d 684. 689 (Fla. 2021) (holding defendant is entitled to a de novo resentencing not merely a remand to impose the fifteen-year review).

order a fifteen-year sentence review pursuant to section 921.1402(2)(c).[4]

Reversed and remanded for de novo resentencing.

BLACK and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.

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[4] We acknowledge there is currently pending before the Florida Supreme Court a question as to whether, as part of the resentencing, the State can empanel a new jury to determine whether the defendant actually killed, intended to kill, or attempted to kill the victim. *Manago*, 317 So. 3d at 1195, *review granted*, SC21-1047, 2021 WL 4735321 (Fla. October 12, 2021). However, we do not address the issue here because the State has not requested that a new jury be empaneled, nor was the issue briefed. *See Lightsee v. First Nat'l Bank of Melbourne*, 132 So. 2d 776, 778 (Fla. 2d DCA 1961) ("We are not authorized to pass upon issues other than those properly presented on appeal . . . .").