

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RASHAD TAYLOR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-1186

August 31, 2022

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Robin F. Fuson, Judge.

Rashad Taylor, pro se.

PER CURIAM.

Rashad Taylor appeals from an order denying his application for a sentence review hearing filed under Florida Rule of Criminal Procedure 3.802. We affirm.

The postconviction record reflects that Mr. Taylor entered negotiated guilty pleas to first-degree murder and attempted

robbery with a firearm in 2007. The trial court sentenced him to life imprisonment for the homicide and to thirty years' imprisonment with a twenty-year minimum mandatory term pursuant to section 775.087(2)(a)2, Florida Statutes (2005), for the attempted robbery.

Mr. Taylor was seventeen when he committed the crimes, and in 2017, he was resentenced pursuant to section 775.082(1)(b)1 to life imprisonment with a provision for judicial review after twenty-five years for the murder conviction. Mr. Taylor's February 23, 2022, application sought judicial review of his attempted robbery sentence.

The postconviction court found that "attempted robbery with a deadly weapon, a first-degree felony punishable by life, is a qualifying offense for a juvenile sentence review hearing" if a juvenile offender is sentenced to life imprisonment or a term of years that is the functional equivalent of a life sentence. The court first noted that "because Defendant committed the attempted robbery before July 1, 2014, Defendant would only be entitled to review on this count if his sentence was unconstitutional." See § 921.1402(1), Fla. Stat. (2005) (providing for judicial review of

specified offenses committed by juvenile offenders on or after July 1, 2014). Then, citing *State v. Morales*, 299 So. 3d 528 (Fla. 2d DCA 2020),¹ the court concluded that "because Defendant's thirty[-]year sentence is not a de facto life sentence," it was not unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012), and *Graham v. Florida*, 560 U.S. 48 (2010).

Attempted robbery with a firearm or a deadly weapon is a second-degree felony. §§ 777.04(4)(c), 812.13(2)(a), Fla. Stat. (2005). Although the written judgments contained in the postconviction record designate the crime as a first-degree felony, the postconviction record does not show that the crime was, or could have been, lawfully reclassified as a first-degree felony,² and section 775.082 does not provide for judicial review of second-degree felony convictions. Regardless, Mr. Taylor's sentence does

¹ "[A]n original term-of-years sentence that does not amount to a de facto life sentence does not violate *Graham*." *Morales*, 299 So. 3d at 530.

² The crime could not have been lawfully reclassified as a first-degree felony under section 775.087(1) because "the use of a weapon is an essential element of the offense" of armed robbery. *Williams v. State*, 850 So. 2d 656, 658 (Fla. 1st DCA 2003); *Tripp v. State*, 610 So. 2d 1311, 1312 (Fla. 1st DCA 1992) (same), *approved*, 642 So. 2d 728 (Fla. 1994).

not violate the Eighth Amendment to the United States Constitution,³ so he is not entitled to judicial review of his sentence pursuant to sections 775.082 and 921.1402. *See Pedroza v. State*, 291 So. 3d 541, 548-49 (Fla. 2020) (juvenile's forty-year sentence was not the functional equivalent of a life sentence and did not violate the Eighth Amendment); *State v. Michaud*, 320 So. 3d 860, 862 (Fla. 2d DCA 2021) ("Michaud is not entitled to relief under section 921.1402 because his offense occurred prior to July 1, 2014, and his sentence is constitutional."); *Melvis v. State*, 305 So. 3d 763, 766 (Fla. 2d DCA 2020) (juvenile defendant's thirty-year sentence was not unconstitutional because it was not a life sentence or the functional equivalent of a life sentence).

Affirmed.

VILLANTI, LaROSE, and KHOUZAM, JJ., Concur.

Opinion subject to revision prior to official publication.

³ *See Henry v. State*, 175 So. 3d 675, 679–80 (Fla. 2015) ("[T]he constitutional prohibition against cruel and unusual punishment under *Graham* is implicated when a juvenile nonhomicide offender's sentence does not afford any 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.' " (quoting *Graham*, 560 U.S. at 75)).