

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RUSSELL JOSEPH RIOUX,)

Appellant,)

v.)

STATE OF FLORIDA,)

Appellee.)

Case No. 2D09-5330

Opinion filed December 8, 2010.

Appeal from the Circuit Court for Polk
County; Angela Cowden, Judge.

Andrea M. Norgard of Norgard & Norgard,
Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Sara Macks, Assistant
Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Russell Joseph Rioux appeals his 2009 convictions and life sentences for sexual battery and lewd molestation on persons less than twelve years old. See §§ 794.011, 800.04, Fla. Stat. (2007). He was fifteen years old at the time of the offenses and sixteen years old at sentencing. We affirm the convictions.

In Graham v. Florida, 130 S. Ct. 2011, 2034 (2010), the United States Supreme Court held that "[t]he constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." Therefore, we vacate Mr. Rioux's sentences and remand for resentencing in accordance with Graham. See also Lavrick v. State, 35 Fla. L. Weekly D2063 (Fla. 3d DCA Sept. 15, 2010); Garland v. State, 35 Fla. L. Weekly D1526 (Fla. 1st DCA July 7, 2010).

Affirmed in part, reversed in part, and remanded for further proceedings.

NORTHCUTT and CRENSHAW, JJ., Concur.