

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed October 18, 2017.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D16-2677  
Lower Tribunal No. 00-33692

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**Othlone Russ,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Stacy D. Glick, Judge.

Othlone Russ, in proper person.

Pamela Jo Bondi, Attorney General, and Nikole Hiciano, Assistant Attorney General, for appellee.

Before ROTHENBERG, C.J., and SALTER and LUCK, JJ.

PER CURIAM.

Othlone Russ appeals the summary denial of his postconviction motion under Florida Rule of Criminal Procedure 3.850. His claim addresses the constitutionality of his sentence following United States Supreme Court and Florida decisions relating to juvenile non-homicide offenders. See, e.g., Henry v. State, 175 So. 3d 675 (Fla. 2015).

We directed the State to file an answer brief in the present case, and the State has conceded that this case should be remanded for consideration of the resentencing provisions of chapter 2014-220, Laws of Florida, codified in sections 775.082, 921.1401, and 921.1402, Florida Statutes. The State has requested that this case be held in abeyance, however, pending resolution of Franklin v. State, No. SC14-1442, in the Florida Supreme Court.<sup>1</sup>

As we did in Miller v. State, 208 So. 3d 834 (Fla. 3d DCA 2017), and Ortiz v. State, 42 Fla. L. Weekly D1620 (Fla. 3d DCA July 19, 2017), we reverse and remand with direction that the trial court is to apply the resentencing provisions identified above. We acknowledge that the State has sought discretionary review of Miller<sup>2</sup> and that the Florida Supreme Court has stayed proceedings in that case

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<sup>1</sup> Review granted November 28, 2016, 2016 WL 9454209, from Franklin v. State, 141 So. 3d 210 (Fla. 1st DCA 2014). The Florida Supreme Court docket discloses that the Court dispensed with oral argument and that merits briefs were complete in March 2017.

<sup>2</sup> State v. Miller, No. SC17-325 (stayed pending disposition of Franklin May 3, 2017).

pending disposition of Franklin. We decline to abate this appeal, but do so recognizing that the State may seek review and a stay, as in Miller, in the Florida Supreme Court pending disposition of Franklin.

Reversed and remanded for resentencing.