

Third District Court of Appeal

State of Florida, July Term, A.D. 2013

Opinion filed July 17, 2013.

Not final until disposition of timely filed motion for rehearing.

No. 3D13-154

Lower Tribunal No. 96-4338

Mario Anderson,
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, Lisa Walsh, Judge.

Mario Anderson, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before ROTHENBERG, EMAS and LOGUE, JJ.

ROTHENBERG, J.

The defendant, Mario Anderson, who was convicted for having committed a first degree murder, armed burglary, and assault in 1996, when he was sixteen

years old, and who received life sentences for the homicide and the armed burglary, appeals the trial court's order denying his motion to correct what he contends is an illegal sentence under Graham v. Florida, 130 S. Ct. 2011 (2010), and Miller v. Alabama, 132 S. Ct. 2455 (2012). For the reasons that follow, we affirm.

First, we conclude that Graham does not apply to this defendant. The Graham court specifically limited its holding to juvenile offenders who do not commit a homicide. "This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole. This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment." Graham, 130 S. Ct. at 2030.

Second, the defendant's sentence was final before Miller was decided. In Geter v. State, 37 Fla. L. Weekly D2283 (Fla. 3d DCA Sept. 27, 2012), this Court held that Miller does not apply retroactively. See also Gonzalez v. State, 101 So. 3d 886 (Fla. 1st DCA 2012) (concluding that Miller does not apply retroactively).

Affirmed.

LOGUE, J., concurs.

EMAS, J., concurring in part and dissenting in part.

For the reasons expressed in my dissent to the denial of motion for rehearing en banc in Geter v. State, 38 Fla. L. Weekly D1405 (Fla. 3d DCA June 26, 2013), I respectfully dissent from the majority opinion in the instant case to the extent it holds that the rule announced in Miller v. Alabama, 132 S. Ct. 2455 (2012) does not apply retroactively to cases already final on direct appeal.