

Third District Court of Appeal

State of Florida

Opinion filed November 7, 2018.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-2669
Lower Tribunal No. 77-3909

Dennis Hegstrom,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Richard L. Hersch, Judge.

Carlos J. Martinez, Public Defender, and Jonathan Greenberg, Assistant Public Defender, for appellant.

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

Before LAGOA, SCALES and LINDSEY, JJ.

PER CURIAM.

Affirmed. See State v. Michel, 43 Fla. L. Weekly S298 (Fla. July 12, 2018) (“[W]e hold that juvenile offenders’ sentences of life with the possibility of parole after 25 years do not violate the Eighth Amendment of the United States Constitution as delineated by the United States Supreme Court in Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and Virginia v. LeBlanc, — U.S. —, 137 S. Ct. 1726, 198 L. Ed. 2d 186 (2017); Romero v. State, 105 So. 3d 550, 552-53 (Fla. 1st DCA 2012) (“[A]ppellant was not a juvenile at the time of the offense. He urges us to overlook this fact by focusing on the juvenile nature of his mental and emotional development. He argues, in essence, that he was a juvenile in all but age. . . . Graham[v. Florida, 560 U.S. 48 (2010)] is not controlling for an adult defendant.”).

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

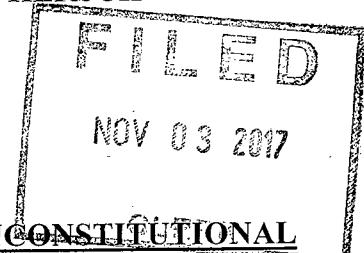
STATE OF FLORIDA,
Plaintiff,
vs.

DENNIS HEGSTROM,
Defendant.

CASE NUMBER: F77-3909

SECTION 004

JUDGE RICHARD HERSCHE



ORDER DENYING DEFENDANT'S MOTION TO CORRECT UNCONSTITUTIONAL
SENTENCE

Dennis Hegstrom has filed the instant motion seeking a resentencing conducted pursuant s. 921.1402, Fla. Stat. (2014). He so moves pursuant to Florida Rules of Criminal Procedure 3.800(a) and 3.850. This court accepts as fact the allegations contained within the Defendant's motion. For the reasons explained below, this motion will be **DENIED**.

The Defendant was indicted in 1977 for first degree murder and robbery. After a jury found him guilty, the court sentenced him to life in prison (eligible for parole after 25 years) for the murder and a consecutive 100 year sentence for the robbery. His convictions were affirmed on appeal, *Hegstrom v. State*, 388 So.2d 1308 (Fla. 3d DCA 1980) but his sentence for the robbery charge was eventually set aside. *State v. Hegstrom*, 401 So.2d 1343 (Fla. 1981). Hegstrom's current Presumptive Parole Release Date (PPRD) is April 30, 2089.

Hegstrom acknowledges that at the time of the offense for which he was convicted, he had already turned eighteen (18) years of age. Notwithstanding, he requests a re-sentencing pursuant to *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012). In *Falcon v. State*, 162 So.3d 945 (Fla. 2015), the Florida Supreme Court adopted the

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reasoning of *Graham* and *Miller* and held that mandatory life imprisonment without parole for offenders under the age of eighteen violated the Cruel and Unusual Punishment provisions of the Eighth Amendment to the United States Constitution. In doing so, the Court recognized as binding the holding of *Miller v. Alabama*, 132 S.Ct. 2455 (2012) and held that *Miller* was to be applied retroactively.

In *Atwell v. State*, 197 So.3d 1040 (Fla. 2016), the Court extended its earlier rulings and held that sentencing a juvenile to life imprisonment *with parole eligibility* violates *Graham* and *Miller*. In *Atwell*, the Court reviewed the sentence of an inmate whose presumptive parole release date was some 140 years in the future. The Court found:

Using Florida's objective parole guidelines, then, a sentence for first degree murder under the pre-1994 statute is virtually guaranteed to be just as lengthy as, or the "practical equivalent" of, a life sentence without the possibility of parole. Indeed, that is the case here, with Atwell's presumptive parole release date having recently been set to 140 years in the future.

A presumptive parole release date set decades beyond a natural lifespan is at odds with the Supreme Court's recent pronouncement in *Montgomery*. Although a State's remedy to *Miller* could include a system for paroling certain juvenile offenders "whose crimes reflected only transient immaturity—and who have since matured," the parole system would nevertheless still have to afford juvenile offenders individualized consideration and an opportunity for release. *Montgomery*, — U.S. —, 136 S.Ct. 718, 736, 193 L.Ed.2d 599 (2016). Most importantly, "their hope for some years of life outside prison walls must be restored." *Id.* at 737.

190 So.3d at 1048. Hegstrom argues that because he was sentenced to life imprisonment for an offense that occurred just eight months past his eighteenth birthday, he now must be resentenced.

In support, Hegstrom has presented to this court extensive argument regarding his youthfulness and intoxication at the time of the offense, his difficult childhood, and his lack of

violent prior criminal history. Hegstrom believes that he is able to show substantial development in maturity and rehabilitation, and has attached proof of his participation in programs available in prison and letters of support. He also has attached scholarly articles on the development of the juvenile brain.

However, he is not entitled to a re-sentencing. In *Guzman v. State*, 183 So.3d 1025 (Fla. 2016), the defendant was placed on probation at age fourteen (14), but violated that probation shortly after turning eighteen (18) and received a sentence of sixty (60) years. A sentence of 60 years given to a juvenile would constitute a *de facto* life sentence and require a resentencing pursuant to *Graham, supra*. However, the Court discharged jurisdiction in the case, and Justice Pariente explained why:

It is only because Guzman's case is removed from the purview of *Graham*, because the violation of probation was committed after he had become an adult, that Guzman is not entitled to be resentenced. The reasoning of *Graham* is, as this Court has noted, based on "the distinction between juveniles and adults." *Henry*, 175 So.3d at 678. **Drawing that distinction may seem arbitrary in a case such as this one, where the difference in age between Graham and Guzman at the time of their respective violations of probation was less than a year, but the line must be drawn somewhere. Society has consistently drawn it at age eighteen. See *Roper v. Simmons*, 543 U.S. 551, 574, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)** (noting that the "qualities that distinguish juveniles from adults do not disappear when an individual turns 18," but that "a line must be drawn" and the "age of 18 is the point where society draws the line for many purposes between childhood and adulthood").

Guzman v. State, 183 So.3d at 1027 (emphasis supplied); *accord*; *Davis v. State*, 223 So.3d 1106 (Fla. 5th DCA 2017). Hegstrom does not cite to any case where *Miller/Graham* relief has been afforded where the triggering offense occurred after the age of eighteen. This court is unaware of any case that requires a re-sentencing in this case.

Because the Defendant had reached his 18th birthday at the time of the murder in this case, the motion is **DENIED**.

The Defendant has thirty (30) days within which to appeal this order. Attached is his motion.

SO ORDERED, in Miami-Dade County, Florida on this 3 day of November, 2017.



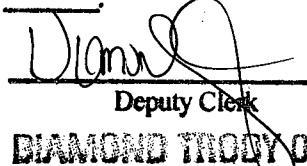
RICHARD HERSCH
CIRCUIT COURT JUDGE

Copies to:

Dennis Hegstrom, DC# 062463
600 U.S. Highway 27, South
South Bay, Florida 33493-2233

State Attorney's Office

I CERTIFY that a copy of this order has been furnished to
the MOVANT, Dennis Hegstrom by mail this _____ day
of NOV 13 2017, 20____.


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