

IN THE
SUPREME COURT OF THE UNITED STATES

App. No. _____

JOSEPH CARTER,
Applicant,

v.

STATE OF FLORIDA,
Respondent.

*ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT*

**APPLICATION TO EXTEND TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

CARLOS J. MARTINEZ
Public Defender

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LAW OFFICES OF THE
PUBLIC DEFENDER
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To the Honorable Clarence Thomas, as Circuit Justice for the Eleventh Circuit Court of Appeals:

Pursuant to 28 U.S.C. § 2101(d) and Rule 13.5 of the Rules of this Court, applicant Joseph Carter respectfully requests an extension of time of 30 days to and including May 3, 2019, in which to file a petition for a writ of certiorari in this Court to review the Florida Supreme Court's decision in this case, which quashed the decision of the Third District Court of Appeal of Florida vacating Mr. Carter's sentence of 152 years in prison for non-homicide offenses committed when he was a juvenile. As grounds in support of this request, the applicant states as follows:

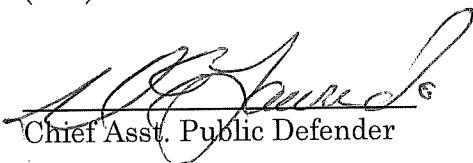
1. The Florida Supreme Court issued its decision in this case on January 3, 2019. See attached.
2. The final date for filing the petition for writ of certiorari is April 3, 2019. The thirtieth day after that date is May 3, 2019.
3. No previous extension of time has been requested.
4. The Office of the Public Defender of the Eleventh Judicial Circuit of Florida represented Mr. Carter on appeal in the state court. Undersigned counsel is an assistant public defender with significant existing obligations, and needs additional time to complete the petition and appendix for filing with this Court.
5. This case presents a potentially meritorious federal constitutional issue that requires careful review in order to prepare a succinct petition: whether the Florida Supreme Court erred in *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018), in holding that this Court in *Virginia v. LeBlanc*, — U.S. —, 137 S.Ct. 1726, 198

L.Ed.2d 186 (2017), expressed a view on the merits of the underlying constitutional claim. The Florida Supreme Court relied entirely on *Franklin* in reversing the Third District Court of Appeal of Florida's decision in Mr. Carter's case.

For the foregoing reasons, it is respectfully requested that this application be granted and that the time for the filing of a petition for writ of certiorari be extended for 30 days to and including May 3, 2019.

Respectfully submitted,

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Counsel for Petitioner

MARCH 22, 2019

Supreme Court of Florida

THURSDAY, JANUARY 3, 2019

CASE NO.: SC17-768
Lower Tribunal No(s).:
3D16-1090; 131979CF0053760001XX

STATE OF FLORIDA

vs. JOSEPH CARTER

Petitioner(s)

Respondent(s)

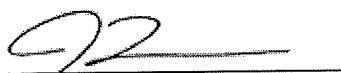
Upon review of the responses to this Court's Order to Show Cause dated December 4, 2018, the Court has determined that it should accept jurisdiction in this case. It is ordered that the Petition for Review is granted, that the Third District Court of Appeal's decision in this case is quashed, and this matter is remanded to the district court for reconsideration upon application of our decision in *Franklin v. State*, 43 Fla. L. Weekly S556 (Fla. Nov. 8, 2018).

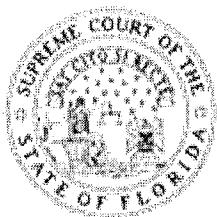
No Motion for Rehearing will be entertained by the Court.

CANADY, C.J., and LEWIS, POLSTON, LABARGA, and LAWSON, JJ., concur.
PARIENTE and QUINCE, JJ., dissent.

A True Copy

Test:


John A. Tomasino
Clerk, Supreme Court



lc

Served:

JONATHAN GREENBERG
LINDA S. KATZ
HON. LISA SHARON WALSH, JUDGE
HON. MARY CAY BLANKS, CLERK
HON. HARVEY RUVIN, CLERK

KeyCite Red Flag - Severe Negative Treatment
Review Granted, Decision Quashed by State v. Carter, Fla., January 3, 2019

215 So.3d 125

District Court of Appeal of Florida,
Third District.

Joseph CARTER, Appellant,

v.

The STATE of Florida, Appellee.

No. 3D16-1090

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Opinion filed March 15, 2017

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Rehearing Denied April 11, 2017

Synopsis

Background: Defendant whose convictions and aggregate sentence of 152 years for burglary and sexual battery committed when he was a minor were affirmed on direct appeal, 410 So.2d 552, filed motion for postconviction relief after he was denied parole. The Circuit Court, Miami-Dade County, No. 79-5376, Lisa Walsh, J., denied motion. Defendant appealed.

[Holding:] The District Court of Appeal, Logue, J., held that defendant's sentence was an unconstitutional de facto life sentence, and thus defendant was entitled to resentencing under statutes governing sentencing of juveniles.

Reversed and remanded with instructions.

West Headnotes (1)

[1] Infants

⇨ Sentencing of Minors as Adults

Sentencing and Punishment

⇨ Juvenile offenders

Defendant's aggregate sentence of 152 years in prison for burglary and sexual battery committed when he was a minor was an unconstitutional de facto life sentence, and

thus defendant was entitled to resentencing under statutes governing sentencing of juveniles, even though defendant was eligible for parole. U.S. Const. Amend. 8; Fla. Stat. Ann. §§ 775.082(3)(c), 921.1401.

3 Cases that cite this headnote

*126 An Appeal from the Circuit Court for Miami-Dade County, Lisa Walsh, Judge. Lower Tribunal No. 79-5376

Attorneys and Law Firms

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

Pamela Jo Bondi, Attorney General, and Linda S. Katz, Assistant Attorney General, for appellee.

Before FERNANDEZ, LOGUE, and SCALES, JJ.

Opinion

LOGUE, J.

The defendant, Joseph Carter, seeks review of the trial court's denial of his 3.850 motion for postconviction relief challenging the constitutionality of his aggregate sentence of 152 years in prison, with parole. We reverse.

In 1979, the defendant, who was a minor at the time, was found guilty of burglary and sexual battery and was sentenced to a total of 152 years for both counts, with parole.¹ In 1982, he was given a presumptive parole release date (PPRD) of March 25, 1993. The PPRD was pushed back, however, due to various disciplinary reports. From 2007 forward, the defendant did not have any disciplinary reports and in 2007, his PPRD was set for March 2016.

In December 2015, the defendant was interviewed by a parole commission investigator regarding the possibility of parole. The investigator recommended parole. However, in April 2016, the parole commission denied parole and provided that the defendant "will be Reinterviewed for [his] Extraordinary Interview during the month of October, 2022."

The defendant argued in his postconviction motion that the aggregate sentence of 152 years was a de facto life sentence of a minor and therefore unconstitutional under Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) and Henry v. State, 175 So.3d 675 (Fla. 2015). His sentence was unconstitutional, he contended, because his parole eligibility was not a meaningful opportunity for release. The defendant sought resentencing under sections 775.082(3)(c) and 921.1401, Florida Statutes (2014). The trial court denied his motion and this appeal followed.

*127 Notwithstanding the fact that he will be reevaluated for the possibility of parole in 2022, we conclude the defendant is correct and that he is entitled to resentencing under sections 775.082(3)(c) and 921.1401. See Atwell v. State, 197 So.3d 1040, 1048 (Fla. 2016) (“In most respects, a sentence of life with the possibility of parole for first-degree murder, based on the way Florida’s parole process operates under the existing statutory scheme, actually resembles a mandatorily imposed life sentence without parole that is not ‘proportionate to the offense and the offender.’ ” (quoting Horsley v. State, 160 So.3d 393, 406 (Fla. 2015)); Henry v. State, 175 So.3d 675, 680

(Fla. 2015), cert. denied, — U.S. —, 136 S.Ct. 1455, 194 L.Ed.2d 552 (2016) (“Because we have determined that [the defendant’s] sentence is unconstitutional under Graham, we conclude that [the defendant] should be resentenced in light of the new juvenile sentencing legislation enacted by the Florida Legislature in 2014, ch.2014-220, Laws of Fla.”); Miller v. State, 42 Fla. L. Weekly D51 at *1 n.1, 208 So.3d 834 (Fla. 3d DCA 2017) (“The State’s contention that [the defendant] was parole-eligible as early as twelve years after the commission of first-degree murder is irrelevant.”).

We therefore reverse the defendant’s aggregate 152-year sentence for burglary and sexual battery and remand to the trial court for the appropriate resentencing under section 775.082(3)(c), Florida Statutes and section 921.1401, Florida Statutes.

Reversed and remanded with instructions.

All Citations

215 So.3d 125, 42 Fla. L. Weekly D633

Footnotes

1 The defendant was sentenced to 137 years for the burglary count and 15 years for the sexual battery count. The conviction and sentence were affirmed on direct appeal in Carter v. State, 410 So.2d 552 (Fla. 3d DCA 1982).