APPENDIX "A"

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

KESNER V. JOASEUS, JR.,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D20-1497

[November 12, 2020]

Appeal of order denying rule 3.800 motions from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Caroline C. Shepherd, Judge; L.T. Case Nos. 502008CF013148A, 502008CF017999B, and 502008CF017998B.

Kesner V. Joaseus, Jr., pro se, DeFuniak Springs.

No appearance required for appellee.

PER CURIAM.

Affirmed.

LEVINE, C.J., GROSS and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Received on Jan. 17th, 2020
At Ham. CI-Anx

APPENDIX
"B" Part 1 of 2

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

STATE OF FLORIDA,

CRIMINAL DIVISION "R"
CASE NO.: 2008-CF-017998-BXXX-MB
2008-CF-017999-BXXX-MB
2008-CF-013148-AXXX-MB

v.

KESNER JOASEUS,
Defendant.
_____/

ORDER CONSOLIDATING DEFENDANT'S SECOND AND SUCCESSIVE MOTION FOR POST CONVICTION RELIEF AND SECOND AND SUCCESSIVE MOTION TO CORRECT SENTENCE, DENYING THE MOTIONS IN PART AND ORDERING THE STATE TO RESPOND IN PART

THIS CAUSE came before the Court on the Defendant's Second and Successive Motion for Post-Conviction Relief filed on March 27, 2019 and Defendant's Second and Successive Motion to Correct Sentence filed on June 18, 2019. The Court has carefully examined and considered the Motions, the record and all pertinent case law.

STATEMENT OF THE CASE AND FACTS

On December 16, 2008, Defendant and two co-defendants engaged in a series of armed robberies. At the time of the robberies, Defendant was eighteen years old and was serving a youthful offender probationary sentence for one count of possession of marijuana with intent to sell in case 2008-CF-13148-AXXX-MB ("13148"). (Ex "A"). Based on the foregoing, Defendant was charged by indictment with one Count of Robbery with a Firearm (Count 1) and one count of Fleeing or Attempting to Elude a Law Enforcement officer (Count 2) in case 2008-CF-017998-BXXX-MB ("17998") and with one count of Robbery With a Firearm While Masked (Count 1) and Burglary While Armed With a Firearm While Masked (Count 2) in Case Number 2008-CF-017999-BXXX-MB ("17999"). (Ex "B"). An affidavit of violation of probation was also filed in

case 13148. (Ex "C").

Due to the related nature of the facts, Defendants proceeded to a consolidated trial in cases 17998 and 17999. The jury found Defendant guilty as charged in both cases and the Court sentenced Defendant in Case Number 17998 to forty (40) years on Count 1 and five years on Count 2, with 759 days of credit for time served. (Ex "D"). The Court sentenced Defendant in Case Number 17999 to forty (40) years on Counts 1 and 2, to be served concurrently with the sentences in case 17998, with 759 days of credit for time served. (Ex "E"). The trial court also heard the VOP charge in case 13148, and after finding Defendant violated his probation, sentenced him to 131 months with 759 days of credit to run concurrently with the sentences in Case Numbers 017998 and 017999. (Ex "F").

On February 7, 2011, Defendant filed a Notice of Appeal of his convictions and sentences in Case Numbers 017998 and 017999. The Fourth District Court of Appeal affirmed Defendant's convictions and sentences, issuing the mandate on January 7, 2013. *Joaseus v. State*, 103 So. 3d 171 (Fla. 4th DCA 2012).

On March 27, 2019, Defendant filed a Second and Successive Motion for Post-Conviction Relief purportedly pursuant to Florida Rule of Criminal Procedure 3.850. In that Motion, Defendant argued that his sentences in cases 017998 and 017999 are unconstitutional because he was eighteen at the time he committed the offenses and the Court did not sentence him under the juvenile sentencing laws. On June 18, 2019, Defendant then filed a Second and Successive Motion to Correct Sentence where he asserts the same argument raised in his March 27, 2019 Motion. Defendant also suggests that his sentences in cases 017998 and 017999 are illegal as compared to his co-defendants' sentences. Additionally, Defendant asserted that his VOP sentence in case 13148 is illegal because it exceeds the statutory maximum for underlying offense. Based on the

allegations contained in the March 27, 2019 Motion, this Court reclassifies the Motion as a Motion to Correct Illegal Sentence under Rule 3.800(a) and considers it in conjunction with the same argument raised in Defendant's June 18, 2019 Motion.

ANALYSIS AND LEGAL RULINGS

a) Whether Defendant Sentences in Cases 17998 and 17999 are Illegal Because Defendant Was Eighteen at the Time He Committed the Underlying Offenses?

In both his March 27 and June 18, 2019 Motions, Defendant argues that his forty year sentences in cases 17998 and 17999 violate the Cruel and Unusual Punishment Clauses of the United States Constitution. Specifically, Defendant contests that he is entitled to the individualized resentencing available to youth under the age of eighteen at the time of the commission of the offense. Citing heavily to a federal trial court ruling from the United States District Court for the District of Connecticut, Defendant asserts that an eighteen year old also has a "youthful" brain and, therefore, should be afforded the same sentencing considerations as a person who is not yet eighteen. *See Cruz v. United States*, 2018 WL 1541898, at *25 (D. Conn. Mar. 29, 2018). Defendant's position is refuted by Florida law, which is binding on this Court.

In 2010, the United States Supreme Court issued its decision in *Graham v. Florida*, 560 U.S. 48, 75 (2010), wherein it held that in order not to run afoul of the Eighth Amendment, any sentence imposed on a juvenile offender for a nonhomicide offense must provide a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Two years later, the United States Supreme Court decided *Miller v. Alabama*, 567 U.S. 460, 480 (2012), wherein it held that before imposing a life sentence on a juvenile for a homicide offense, the court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

In response to *Graham* and *Miller,* the Florida Legislature enacted chapter 2014-220, Laws of Florida, which was codified in sections 775.082, 921.1401, and 921.1402, Florida Statutes. Section 921.1402 provides that juvenile offenders who commit offenses after July 1, 2014 receive a review hearing and opportunity for early release after serving fifteen, twenty, or twenty-five years depending on the crime committed and the length of the prison sentence. The Florida Supreme Court has held that the statutes created by chapter 2014-220, Laws of Florida, apply retroactively to sentences imposed before July 1, 2014 if the defendant's sentence violates *Miller* or *Graham. See State v. Purdy*, 252 So. 3d 723, 725 (Fla. 2018)(citations omitted).

However, Florida law establishes that neither *Graham*, *Miller*, nor Florida's juvenile sentencing statutes apply to persons who are eighteen years old or older when they commit an underlying offense. *Davis v. State*, 223 So. 3d 1106, 1108-09 (Fla. 5th DCA 2017) (holding that a person who is eighteen years old when they commit an offense is not entitled to be sentenced under Florida's juvenile sentencing statues). *See also Guzman v. State*, 183 So. 3d 1025 (Fla. 2016) (Pariente, J., concurring) (noting that the line for juvenile sentencing considerations "must be drawn somewhere" and that "[s]ociety has consistently drawn it at eighteen"). Accordingly, as Defendant was eighteen at the time he committed the underlying offenses in cases 17998 and 17999, his arguments regarding juvenile offender sentencing considerations lack merit and his Motions are denied on these grounds

b) Whether Defendant's Sentences in Cases 17998 and 17999 Are Illegal as Compared to his Co-Defendants' Sentences?

Although not articulated as its own argument, in his Motions, Defendant also suggests that his sentences in cases 17998 and 17999 are illegal because they are disproportionate to the sentences his co-defendants received. This argument is not cognizable in a rule 3.800(a) motion. *Shivers v. State*, 96 So. 3d 1039, 1040 (Fla. 4th DCA 2012) ("Whether a defendant's sentence is

disproportionate as compared to his co-defendant's sentence is not cognizable in a rule 3.800(a) motion."). Therefore, to the extent Defendant is raising such an argument, his Motions are denied on these grounds.

c) Whether Defendant's 131 Month Sentence in Case 13148 is illegal?

Lastly, in his June 18, 2019 Motion, Defendant asserts that his 131 month sentence in case 13148 is illegal because the underlying offense, possession of marijuana with the intent to sell, was a third degree felony which was only punishable by up to 60 months. (June 18, 2019 Motion at page 17). The Court orders the State to respond to this issue only.

Based on the foregoing, it is hereby

ORDERED that the State is directed to respond to Defendant's argument regarding his sentence in case 013148 as outlined on page 17 of Defendant's June 18, 2019 Motion within sixty (60) days from the date of this Order. It is further

(continued onto next page)

ORDERED that Defendant's March 27, 2019 Motion is reclassified as a Motion to Correct Illegal Sentence under Florida Rule of Criminal Procedure 3.800(a) and is consolidated with Defendant's June 18, 2019 Motion. Defendant's arguments in those Motions regarding the legality of his sentences in Case 17998 and 17999 are **DENIED**. This is a non-final, non-appealable order. Defendant has no right to appeal until a final order is entered.

NOTICE TO DEFENDANT

This Order is entered pursuant to Florida Rule of Criminal Procedure 3.850(f)(6). Florida Rule of Criminal Procedure 3.850(e), which became effective on July 1, 2013, states in pertinent part, "Leave of court is required for the filing of an amendment after the entry of an order pursuant to subdivision . . . (f)(6)." **Accordingly, any supplemental or amended motion for postconviction relief filed by Defendant after the entry of this Order is procedurally barred and shall be summarily stricken as unauthorized or shall not be considered unless Defendant has first requested and been granted leave (i.e., permission) of this Court to file such supplemental or amended motion.** *See Saltzman v. State*, 154 So. 3d 438 (Fla. 4th DCA 2014); *Wrencher v. State*, 238 So. 3d 814 (Fla. 4th DCA 2018).

DONE AND SIGNED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 2 day of Jan, 2020.

CAROLINE SHEPHERD
CIRCUIT JUDGE

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