

APPENDIX “A”

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 2007CF0034
DIVISION 50: Judge Dennis Craig

v.

PATRICIA ROOSA,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS MATTER came before the Court for consideration of the Defendant's *pro se* "Motion for Postconviction Relief Based On United State Supreme Court Cases Miller v. Alabama, 132 S.Ct. 2455 (2015); Montgomery v. Louisiana, 135 S.Ct. 718 (2016)," filed on May 15, 2017, pursuant to Florida Rule of Criminal Procedure 3.850(b)(2). The Court, having reviewed the motion, court file, and being fully advised in the premises, hereby finds as follows:

Following a nonjury trial, on May 26, 2009, Defendant was convicted of First Degree Murder for the murder of Elizabeth Uptagrafft, Home Invasion, Conspiracy, and Burglary of a Structure or Conveyance. Defendant was nineteen (19) years old at the time of the offenses. On June 26, 2009, she was sentenced to three life sentences and two five-years sentences, all to run concurrently. Her conviction and sentence was affirmed on July 27, 2010, with Mandate issued on August 18, 2010. *Roosa v. State*, 41 So. 3d 915 (Fla. 5th DCA 2010). Defendant filed a Motion for Postconviction Relief on May 18, 2012, which was denied without an evidentiary hearing on July 26, 2012. The denial of her motion was affirmed on April 2, 2013, with Mandate issued on April 26, 2013.

Defendant now files a successive Motion for Postconviction Relief, pursuant to Rule 3.850(b)(2). This Rule allows a defendant to file a motion for postconviction relief after the two-year time limitation when a new fundamental constitutional right is established and the new constitutional right is to be applied retroactively. Such a claim must be made within two years after the new constitutional right is established.

Here, Defendant points to no new constitutional right for nineteen-year-old offenders. In her motion, Defendant cites to recent United States Supreme Court opinions on juvenile justice, and she makes cogent case for why a nineteen-year-old should be considered under the same constitutional standard as an eighteen-years-old. She requests that the Court include "youthful offenders," offenders who were nineteen- to twenty-one years old at the time of the offense, in this precedent. She requests that the Court grant her a new penalty phase to allow her to present mitigating factors based upon her age.

In 2005, the Supreme Court of the United States found that juveniles have lessened culpability due to their "lack of maturity and an underdeveloped sense of responsibility," because they are susceptible to peer pressure and outside influences, and because their character is not yet fully formed. *Roper v. Simmons*, 543 U.S. 551, 569-70, 575-79 (2005). In *Roper*, the Supreme Court held that juveniles who were under 18 at the time they committed their crimes could not be sentenced to death because such a sentence would violate the Eighth Amendment prohibition against cruel and unusual punishment. *Id.*

The Supreme Court then found that life sentences without the possibility of parole are unconstitutional for juvenile offenders who commit non-homicide offenses. *Graham v. Florida*, 560 U.S. 48, 82 (2010). Following this line of cases in 2012, the Supreme Court held that mandatory life sentences without the possibility of parole for juvenile offenders were

unconstitutional. *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 2469 (2012). The Florida courts have held that the *Graham* and *Miller* precedents are retroactive. *Falcon v. State*, 162 So. 3d 954, 956-57 (Fla. 2015). The *Falcon* ruling is consistent with *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

No case, however, has extended these Eighth Amendment protections to offenders who are over eighteen years of age at the time of the offense. As the Fourth DCA explained:

[B]oth *Graham* and *Miller* apply only to juvenile offenders, that is, those who were under the age of 18 at the time they committed the offense. *Miller*, 132 S.Ct. at 2460 ("We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments' "); *Graham*, 130 S.Ct. at 2030 ("Because '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,' those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.") (quoting *Roper v. Simmons*, 543 U.S. 551, 574, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)).

Article I, section 17, of the Florida Constitution provides:

The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.

The trial court correctly concluded that the holdings of *Graham* and *Miller* do not apply in this case. To the extent Janvier asks this Court to expand these holdings to other "youthful offenders" under the age of 21, this Court is bound by the pronouncements of the Supreme Court of the United States.

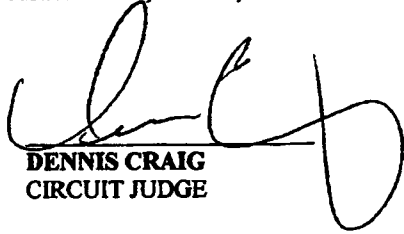
Janvier v. State, 123 So. 3d 647, 647-48 (Fla. 4th DCA 2013).

This Court is likewise bound by the Supreme Court precedent.

Therefore, it is ORDERED and ADJUDGED Defendant's "Motion for Postconviction Relief Based On United State Supreme Court Cases Miller v. Alabama, 132 S.Ct. 2455 (2015); Montgomery v. Louisiana, 135 S.Ct. 718 (2016)" is DENIED.

DONE and ORDERED in Chambers, Kim C. Hammond Justice Center, Bunnell, Florida
this 17th day of May, 2017.




DENNIS CRAIG
CIRCUIT JUDGE

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Office of the State Attorney

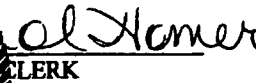
Patricia L. Roosa, D.C. #V33283, Lowell Correctional Institution Annex, 11120 NW Gainesville Road, Ocala, Florida 34482-1479.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Patricia L. Roosa by () delivery

☒ mail () facsimile on 5/17/17




Michael Homer
DEPUTY CLERK

APPENDIX “B”

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

PATRICIA ROOSA,

Appellant,

v.

Case No. 5D17-1848

STATE OF FLORIDA,

Appellee.

Decision filed August 1, 2017

3.850 Appeal from the Circuit
Court for Flagler County,
Dennis Craig , Judge.

Patricia Roosa, Ocala, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

TORPY, BERGER and WALLIS, JJ., concur.

APPENDIX “C”

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

PATRICIA ROOSA,

Appellant,

v.

CASE NO. 5D17-1848

STATE OF FLORIDA,

Appellee.

_____/

DATE: September 14, 2017

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing, Issuance of Written Opinion, and/or Certification, filed August 21, 2017, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Torpy, Berger, and Wallis

cc:

Office of Attorney General

Pamela J Koller

Patricia Roosa