

IN THE SUPREME COURT OF FLORIDA

Case No. SC22-0429

SHELTON JACKSON

Petitioner,

v.

STATE OF FLORIDA,

Respondent

JURISDICTIONAL BRIEF OF RESPONDENT

ASHLEY MOODY
ATTORNEY GENERAL

VIRGINIA CHESTER HARRIS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0706221

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300

COUNSEL FOR RESPONDENT
virginia.harris@myfloridalegal.com
crimapptlh@myfloridalegal.com

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PRELIMINARY STATEMENT

Petitioner, Shelton Jackson, was the defendant in the court below. This brief will refer to Petitioner as such, defendant or by proper name. Respondent, the State of Florida, was the prosecution below; the brief will refer to Respondent as such, the prosecution, or the State.

“JB” will designate Petitioner’s Jurisdictional Brief and will be followed by any appropriate page number.

STATEMENT OF THE ISSUES

Pursuant to Florida Rule of Appellate Procedure 9.210(f), if this Court grants review, the State does not intend to raise any affirmative issues on cross-review, which are independent of those on which jurisdiction is invoked and independent of those raised by Petitioner in his statement of the issues.

STATEMENT OF THE CASE AND FACTS

The State provides the following statement of the case and facts from the opinion of the First District in *Jackson v. State*, 333 So. 3d 740 (Fla. 1st DCA 2021):

Petitioner pled guilty to armed robbery, armed kidnapping, and first-degree murder in 1990. *Id.* at 742. Due to a plea agreement with the State, the trial court sentenced Petitioner to consecutive life sentences. *Id.* Petitioner later argued that his sentences were unconstitutional pursuant to *Graham v. Florida*, 560 U.S. 48, 74, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). *Id.* The First District agreed and reversed the trial court's order denying his rule 3.800 motion. *Id.* The First District issued a mandate indicating Petitioner was entitled to a resentencing on his non-homicide offenses. *Id.* The First District further stated that if Petitioner's sentences were due to a negotiated plea, the parties could agree to a resentencing, or the plea offer could be withdrawn, which would result in the parties conducting a trial. *Id.*

In 2017, Petitioner filed a motion pursuant to rules 3.800(a) and

3.850 alleging he was entitled to a resentencing on all his charges. *Id.* at 742. In addition to other United States Supreme Court precedent and the mandate, Petitioner relied upon *Atwell v. State*, 197 So. 3d 1040, 1050 (Fla. 2016). *Id.* However, instead of issuing a dispositive order on Petitioner's case, the trial court issued an order setting a status conference to discuss whether he was entitled to a resentencing. *Id.* While Petitioner awaited the outcome, this Court receded from *Atwell*. *Id.* Due to the change in the law, the State then argued Petitioner should only be resentenced on his non-homicide offenses. *Id.* Petitioner countered that the trial court could not rescind its order setting a status conference. *Id.*

Because *Atwell* was no longer good law, the trial court determined that Petitioner was only entitled to a resentencing on his non-homicide offenses. *Id.* Petitioner appealed the trial court's decision to deny him a resentencing on his homicide offense. *Id.*

On appeal, Petitioner argued that the trial court erred by denying him a resentencing on his homicide offense because when it issued an order calling for a status conference, it functionally granted

his motion to vacate sentence. *Id.* at 742-43. Petitioner stated that, for this reason, the trial court lacked jurisdiction to reconsider its status-conference order and a manifest injustice would result if he did not receive a resentencing. *Id.* at 743.

However, the First District rejected Petitioner's claim. *Id.* at 743. The First District relied upon *Hall v. State*, 331 So. 3d 272 (Fla. 1st DCA 2021) in its determination that the trial court's order calling for a status conference to determine Petitioner's eligibility for resentencing was not the functional equivalent of an order granting resentencing. *Id.* It further noted that, "*in any event,*" *Rogers v. State*, 296 So. 3d 500, 507-09 (Fla. 1st DCA 2020) and rule 3.850(f)(4), indicate a trial court retains jurisdiction where an order on a postconviction motion is not final and resentencing is not complete. *Id.* (italics added).

Next, the First District rejected Petitioner's arguments that this Court's holdings in *State v. Okafor*, 306 So. 3d 930 (Fla. 2020) and *State v. Jackson*, 306 So. 3d 936 (Fla. 2020) warranted reversal. *Id.* at 743. The First District indicated that unlike *Okafor* and *Jackson*,

it did not vacate Petitioner's homicide sentence or order a resentencing; the mandate directed the trial court to conduct further proceedings on petitioner's non-homicide offenses and noted he was not necessarily entitled to a resentencing. *Id.* The court also rejected Petitioner's argument that *State v. Jackson*, 276 So. 3d 488 (Fla. 1st DCA 2019) entitled him to a resentencing and indicated that it had expressly receded from it in *Rogers*. *Id.*

Finally, the First District relied upon *Hall* and determined that even if the trial court's denial of resentencing was contrary to the court's mandate, Petitioner's claim would still be rejected because the law of the case doctrine must give way when there is an intervening change in the law underlying the decision. *Id.* at 744. The court further noted that "when a mandate or holding from an appellate court has been later overruled, before a trial court's judicial labor is complete, the trial court has the authority to disregard that order and change its ruling to comply with the new legal standards. See *Rembert v. State*, 300 So. 3d 791, 794 (Fla. 1st DCA 2020)." After indicating that the denial of a resentencing would not constitute a

manifest injustice because a resentencing was a de novo proceeding in which the decisional law in effect at the time applies—i.e., *State v. Michel*, 257 So. 3d 3, 6–7 (Fla. 2018) and *Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018) — the First District affirmed. *Id.*

ARGUMENT

WHETHER THIS COURT HAS JURISDICTION. (Restated)

Petitioner incorrectly argues that this Court has jurisdiction pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981) because the First District “relied upon” *Rogers*, which certified a conflict with cases out of the Fourth and Fifth District regarding whether a trial court’s order granting relief under Florida Rule of Criminal Procedure 3.800 is a final, appealable order. Petitioner noted that *Rogers* has been stayed pending the disposition of *Morgan v. State*, Case No. SC20-0641. (JB. 4).

However, in *Jackson*, the First District determined that the trial court’s order calling for a status conference to determine if Petitioner was eligible for resentencing did not constitute the functional equivalent of an order granting resentencing. Therefore, this case is

not like *Rogers* or *Morgan*. In *Rogers* and *Morgan*, the trial court initially granted the defendant's rule 3.800 motion and ordered resentencing, and then, after the change in the law, it vacated the order and denied the motion. See *Rogers v. State*, 296 So. 3d at 503 and *Morgan v. State*, 293 So. 3d 1081, 1082 (Fla. 2d DCA 2020). In *Jackson*, the trial court never granted a resentencing. In fact, *Jackson* is more like *James Curtis Malone*, SC22-057, in which this Court recently declined jurisdiction.

In *Malone v. State*, 330 So. 3d 969 (Fla. 1st DCA 2021), the First District determined that the trial court never rendered a final, appealable order on the defendant's postconviction motion. *Id.* at 972. According to the *Malone* court, even though the order of the trial court indicated the defendant was entitled to a resentencing, it did not constitute an order granting resentencing or the functional equivalent. *Id.* Similar arguments had been rejected on at least two prior occasions in other cases cited by the First District. *Id.* Also, pursuant to rule 3.850(k), all final orders denying motions for postconviction relief had to contain language that "the defendant has

the right to appeal **within 30 days of the rendition of the order.**” *Id.* (emphasis in original). Such language did not appear in the order of the trial court. *Id.* Therefore, like *Jackson*, the First District’s holding in *Malone* included that the order of the trial court did not constitute an order granting resentencing or the functional equivalent. *See also, Walter Hall v State*, SC22-146 (jurisdiction declined).

Finally, to the extent the *Jackson* court briefly cited to *Rogers* in its discussion regarding the law of the case, it was only mentioned because the court indicated that *Rogers* overruled its prior cases, which included *State v. Jackson* and *Simmons v. State*, 274 So. 3d 468 (Fla. 1st DCA 2019). *Id.* at 743. The First District then explained that it never issued a mandate vacating Petitioner’s homicide sentence and that there was no law of the case, which entitled him to a resentencing. *Id.* The court further noted that the State had the right to reconsider the plea agreement it entered with Petitioner and that a resentencing had not occurred. *Id.* Neither *Morgan* nor *Rogers* resemble the instant case

Based on the discussion above, Petitioner has not established *Jollie* jurisdiction in this case.

CONCLUSION

WHEREFORE, this Court should decline jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished through the e-portal to Kathleen Pafford, Counsel for Petitioner, at Kathleen.pafford@flpd2.com, on this 20th day of May 2022.

ASHLEY MOODY
ATTORNEY GENERAL

/s/Virginia Chester Harris
By: Virginia Chester Harris
Assistant Attorney General
Florida Bar No. 0706221
Attorney for the State of Florida
Office of the Attorney General
PL-01, the Capitol
Tallahassee, FL 32399-1050
(850) 414-3300 Ext. 3581
(850) 922-6674 (Fax)

/s/Trisha Meggs Pate
By: Trisha Meggs Pate
Tallahassee Bureau Chief

Criminal Appeals
Florida Bar No. 0045489

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing contains 1,459 words, per the “word count” feature in Microsoft Word, and was printed in 14-point Bookman Old style. This satisfies the requirements of Florida Rules of Appellate Procedure 9.045 and 9.210(a)(2)(A).

/s/Virginia Chester Harris
Virginia Chester Harris
Attorney for the State of Florida