IN THE SUPREME COURT OF FLORIDA

KADEEM QUAISHAWN HART, Petitioner, v. STATE OF FLORIDA, Respondent.	Case No. SC16-464

STATE'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE

RESPONDENT, the State of Florida (hereinafter State), responds to this Court's Order to Show Cause of December 29, 2016.

In its Order to Show Cause, this Court directed the State to show cause:

> why in light of Kelsey v. State, 2016 WL 7159099 (Fla. Dec. 8, 2016), this Court should not accept jurisdiction in this case, summarily quash the decision being reviewed, and remand this case to the district court with instructions to further remand for resentencing in conformance with chapter 2014-220, Laws of Florida, which has been codified in sections 775.082, 921.1401, and 921.1402 of the Florida Statutes.

(Ord. of December 29, 2016).

As to the non-homicide offenses Appellant was convicted of, which occurred in 2007 when he was 15 years of age, after entering guilty pleas in both of his cases, Appellant received a sentence of 30 years in prison for sexual battery and kidnapping in case number 1251 and 20 years in prison for carjacking in case number 1250. The 20 year sentence was to run consecutively to the 30 year sentence.

The State notes that this case is distinguishable from the Kelsey decision because Appellant was never sentenced to life on his non-homicide offenses. In Kelsey v. State, No. SC15-2079 (Fla. Dec. 8, 2016) page 5, this Court stated, "Kelsey represents a narrow class of juvenile offenders, **those resentenced from life to term-of-years sentences after Graham**, for crimes committed before chapter 2014-220's July 1, 2014, effective date."(emphasis added).

In any event, if this Court should determine that Appellant is entitled to a resentencing, the State notes that pursuant to the 2014 juvenile sentencing statute, it is entitled to seek a life sentence when the case is remanded for resentencing.[1]

In Kelsey v. State, slip opinion page 5, this Court stated as follows:

> As we discuss further below, we conclude that our decision in Henry v. State, 175 So. 3d 675 (Fla. 2015), requires that **all juvenile offenders whose sentences meet the standard defined by the Legislature in chapter 2014-220, a sentence longer than twenty years, are entitled to judicial review.**

(emphasis added).

However, this Court further stated as follows:

> **However, in applying chapter 2014-220, we agree with the State that the new sentencing scheme contemplates the possibility of a life sentence for a juvenile nonhomicide offender.** See Horsley, 160 So. 3d at 404 ("Juveniles convicted of nonhomicide offenses, thereby implicating Graham rather than Miller, also may be sentenced to life imprisonment if the trial court, after considering the specified factors during an individualized sentencing hearing, determines that a life sentence is appropriate." (citing ch. 2014-220 §§ 1, 3, Laws of Fla.)). **Because we**

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[1] It is noteworthy that, at the time of the sentencing hearing, the State was precluded from asking for life based on Graham.

determine that resentencing is the appropriate remedy, the trial courts may embrace all of the provisions of chapter 2014-220 and are not required to limit themselves to only applying the judicial review provision. This would mean that if the State seeks a life sentence, the trial court's determination would have to be informed by individualized sentencing considerations.

Kelsey further argues that he has a reasonable expectation of finality in his forty-five-year prison term because his term is lawful apart from its failure to provide judicial review. We disagree.

In Ashley v. State, 850 So. 2d 1265, 1267 (Fla. 2003), we held that "[o]nce a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles." (citing Lippman v. State, 633 So. 2d 1061 (Fla. 1994); Clark v. State, 579 So. 2d 109 (Fla. 1991)). To do so, we articulated, was a clear violation of the Double Jeopardy Clause. Id. (citing State v. Wilson, 680 So. 2d 411, 413 (Fla. 1996)). **In 2012, we clarified that jeopardy attaches only to a legal sentence. Dunbar v. State, 89 So. 3d 901, 905 (Fla. 2012) (citing Harris v. State, 645 So. 2d 386, 388 (Fla. 1994)).**

Therefore, jeopardy has not attached to Kelsey's illegal sentence, and when he is resentenced according to the provisions of chapter 2014-220, the State may again seek life imprisonment with judicial review. Kelsey originally began serving his sentence as a life sentence, but that sentence became illegal when the Supreme Court issued Graham and Kelsey successfully sought relief. However, his sentence was unconstitutional not because of the length of his sentence, but because it did not provide him a meaningful opportunity for early release based on maturation and rehabilitation. Accordingly, Kelsey's resentencing under the provisions of chapter 2014-220 would not place him in any worse position than he would have been had he initially faced post-Graham resentencing under the statute.

For these reasons, there is no compelling reason that the State must be precluded from seeking a life sentence that complied with Graham:

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.

Graham, 560 U.S. at 75. (emphasis added). Id. at pages 11-13.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on January 13, 2017: Glen Gifford, Esquire, at glen.gifford@flpd2.com.

Respectfully submitted and certified,
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