

IN THE SUPREME COURT OF FLORIDA

KADEEM QUAISHAWN HART,

Petitioner,

vs.

CASE NO. SC16-464

STATE OF FLORIDA,

Respondent.

REPLY TO RESPONSE TO ORDER TO SHOW CAUSE

The State distinguishes this case from Kelsey v. State, 41 Fla. L. Weekly S600b (Dec. 8, 2016), on grounds that unlike Kelsey, Hart was never sentenced to life in prison on his nonhomicide offenses committed at age fifteen. Petitioner does not explain why this procedural history justifies denying Hart judicial sentence review while extending it to Kelsey.

Denial of relief would be inconsistent with two October 2016 decisions of this Court requiring resentencing of juvenile offenders initially given 50- and 40-year sentences before the decision in Henry v. State, 175 So. 3d 675 (Fla. 2015). See Trejo v. State, 2016 WL 5900149 (Fla. Oct. 11, 2016), quashing Trejo v. State, 159 So. 3d 284 (Fla. 4th DCA 2015); Michel v. State, 41 Fla. L. Weekly S454 (Fla. Oct. 11, 2016), quashing Michel v. State, 159 So. 3d 233 (Fla. 4th DCA 2015). The Court's decisions in Trejo and Michel did not hinge on the juvenile offender

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having initially received a life sentence that a resentencing court then reduced after Graham and before Henry.

Further, as Justice Pariente noted in her opinion dissenting from the denial of relief in Hill v. State, No. SC15-1667 (on which a motion to reinstate is pending), this Court cited Kelsey in quashing a Fifth DCA decision that affirmed a 40-year sentence imposed on a juvenile who had not previously been sentenced to life before Graham v. Florida, 560 U.S. 48 (2010). Smith v. State, 2016 WL 7217234 (Fla. Dec. 13, 2016).

In light of these decisions, compelling Hart to serve his cumulative 50-year sentence without judicial sentence review after 20 years would violate the proportionality principle inherent in the Eighth Amendment, as discussed in Landrum v. State, 192 So. 3d 459 (Fla. 2016). There the Court held that juvenile offenders convicted of second-degree murder and sentenced to life before Graham are entitled to resentencing under Chapter 2014-220. Noting that it had declared juvenile first-degree murderers sentenced to life for offenses committed before July 1, 2014, eligible for resentencing, the Court reasoned that “[c]onsiderations of fairness and uniformity make it very difficult to justify depriving a person of his liberty or his life, under process no longer considered acceptable and no longer applied to indistinguishable cases.” Id. at 468 (internal quotations and citations omitted). These considerations should also preclude denial of resentencing and

judicial sentence review to Hart while extending this relief to the similarly situated juvenile offenders in Kelsey, Trejo, Michel, Smith, and perhaps Hart and Waiters.

SIGNATURE OF ATTORNEY
AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Jennifer Moore, Office of the Attorney General, at crimapptlh@myfloridalegal.com; this 20th day of January, 2017.

Respectfully submitted,

/s/ Glen P. Gifford _____
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