IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR CITRUS COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO.: 1998-CF-717**

MICHAEL P. ROSADO,

Defendant.
_____/

SENTENCING ORDER

THIS COURT having considered Defendant's Motion for Order Granting a Resentencing Hearing, having reviewed the records of this case and all documents pertinent to Defendant's motions, having held a hearing on June 22, 2017, and being otherwise fully advised in the premises finds as follows:

I. BACKGROUND

A. On October 13, 1999, the Defendant was found guilty after a jury trial of count I, First Degree Murder; count II, Attempted Murder in the Second Degree with a Firearm; and count III, Conspiracy to Commit First Degree Murder. On November 12, 1999, he was sentenced to Life Without Possibility of Parole as to Count I, and 199 months in the Department of Corrections as to Counts II and III consecutive to Count I. The Defendant's judgment and sentence was affirmed. See Rosado v. State, 766 So. 2d 1247 (Fla. 5th DCA 2000).

B. On November 12, 2002, the Defendant filed a Motion for Post-Conviction Relief which the Court denied. On May 22, 2016, the Defendant filed the instant Motion seeking a re-sentence hearing. He claims he is entitled to resentence based on Falcon v. State, 162 So.3d 954 (Fla. 2015) which found juveniles sentenced to life without possibility of parole was unconstitutional. The State was ordered to respond and in its Response conceded a new

sentencing hearing under sections 921.1401 and 921.1402, Florida Statutes (2014) was necessary.

C. This cause having come on to be heard by operation of law based upon the Mandates of Graham v. Florida, 560 U.S. 48 (2010), Miller v. Alabama, 567 U.S. 460 (2012) and Atwell v. State, 197 So. 3d 1040 (Fla. 2016). On June 22, 2017, this Court had a hearing and the following persons were before the court; Peter Magrino, Assistant State Attorney, Michael Ufferman representing the defendant Michael Rosado, Don Pumphry, Jr., co-counsel to Michael Ufferman.

II. REQUIREMENTS OF SECTION 921.1401(2)(a)-(j), FLORIDA STATUTES

A. In 2010, the United State Supreme Court held that sentencing juveniles to life imprisonment without possibility of parole for non-homicide offenses were unconstitutional. See Graham v. Florida, 560 U.S. 48 (2010). The Supreme Court found that:

> 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 [juvenile offenders] some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.... It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on juvenile nonhomicide offender, it does not require the State to release that offender during his natural life.... The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 75. Later in 2012, the United States Supreme Court held that a mandatory life sentence without the possibility of parole for juvenile offenders who commit homicides violates the Eighth Amendment. Miller v. Alabama, 567 U.S. 460 (2012). However, Miller does not bar a court from imposing a sentence of life without the possibility of parole, it requires the court "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 480. The Court explained:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Id. at 477 (citations omitted). Meanwhile, the Florida Supreme Court held that juveniles require individualized sentencing under section 775.082(b), Florida Statutes and section 921.1401, Florida Statutes. Atwell v. State, 197 So. 3d 1040 (Fla. 2016). The Court found that:

> Under that sentencing framework, the sentencing court is authorized to impose a sentence from 40 years to life imprisonment after considering youth-related sentencing factors. Importantly, unlike the parole system in place, the juvenile offender's sentence is reviewed by a trial judge after 25 years, who then determines whether a sentence modification is warranted after reviewing, among other factors, the juvenile offender's youth and its attendant characteristics at the time of the offense, the opinion of the victim or the victim's next of kin concerning the release of the juvenile offender from prison, and whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

Id. at 1043 (citations omitted).

B. Florida's criminal Punishment Code mandates that the primary purpose of sentencing is punishment and that rehabilitation, while desirable is secondary to the primary purpose of punishment. Under section 775.082(b), Florida Statutes (2016),

> A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her

sentence in accordance with s. 921.1402(2)(a).

Moreover, section 921.1401(2)(a)-(j), Florida Statutes (2016) requires the trial court to consider ten (10) factors before assessing a life sentence. The Court considered each factor as outlined below.

i. Section 921.1401(2)(a) The nature and circumstances of the offense(s) committed by the defendant.

a. On September 27, 1998, A small group of teenagers were sitting on the front porch of a neighbor's house. It was nighttime. One of the boys, Josh Hopkins; himself a resultant, surviving victim, knew the defendant. The defendant, Michael Rosado, was in the front passenger seat of a small red car. As the car approached the victim's residence, Josh Hopkins saw sparks coming out of the end of the barrel of a pistol. Michael Reeves was struck in the chest and Hopkins was also struck. The decedent was struck in the center of his chest, dying almost immediately. The distance between the gun and the decedent was approximately 100 feet. The projectiles were .22s.

b. The decedent's brother Christopher NKA Uhatafe was at the residence that night and confirms he heard 6-8 shots that he felt were firecrackers. He held his brother's hand as he died.

c. Mr. Hopkins received severe and life-threatening injuries including a punctured lung, destroyed spleen, and damaged kidney. This case was initially presented in 1998 as a gang-related shooting. Mr. Hopkin's testimony does not support that claim. Merely because a person shoots another individual does not mean that the person killed was in anyway involved in nefarious activities. This court heard no testimony that the Reeve's were in any way associated in gang activities. Mr. Hopkins only version of that fateful night was that he had waved at other boys at the Manatee Lanes bowling center. There was no flashing of gang signs.

d. There had been rumors that the decedent's older brother William was the intended target; and this was simply a case of misidentification.

e. The investigation by the Sheriff's Office focused on school age youths of the same age as the decedent. Since Hopkins could identify the shooter he was arrested. Located inside of the car used in this offense were two (2) gang-related items: 1) a blue bandana, and 2) a small plastic pitchfork (3") high glued to the dash. Law enforcement felt they were the trademarks of a nascent group called "Folk Nation".

f. Subsequent investigation led them to arrest another older man who was the supposed head of this "gang". He was the purported driver who was rumored to have coerced the defendant into the shooting. He was tried on charges of Conspiracy to Commit Murder and Murder. He was acquitted at trial.

ii. Section 921.1401(2)(b) The effect on the victim's family and on the community

a. It's not just the decedent's family that was impacted by this crime. Josh Hopkins was grievously wounded for no reason other than sitting next to his best friend, Michael Reeves. Mr. Hopkins suffers the unique agony of both his physical pain, but the emotional agony of losing his best friend. Even after the passage of almost two decades he is inconsolable in describing the murder of his friend.

b. The few surviving family members describe their loss as what anyone would expect at the unnecessary loss of life of a teenage boy. Tragic, stupid and cowardly. The surviving brothers Christopher and William spoke for their now deceased mother Cindy as, having never recovered from the loss of her son.

iii. Section 921.1401(2)(c) The defendant's age, maturity, intellectual capacity, mental and emotional health at the time of the offense.

a. The defendant was 16 at the time of the murder. There was no evidence presented that he was either significantly over nor under the traditional developmental hallmarks of a teenage boy. There is anecdotal evidence that he may have been under the domination of a perceived older gang leader.

b. Dr. James Garbarino testified as an expert witness in the study of the developing adolescent brain. Although most of this witnesses' information was from the defendant himself, self-reported, it was and is relevant to this court's determination on this factor and others. Of great interest to this court and anyone interested in criminology is that most gang members "age out". Simply stated; they got tired of the life. He knew it was wrong to kill and maim on September 27, 1998. His continued opinion is that this act was attributable to youthful impetuosity and the onerous influence of an older more seasoned criminal type(s).

iv. Section 921.1401(2)(d) The defendant's background including family, home and community environment.

a. Commencing with a non-family member Kathy Izaguirry; the defense presented testimony that since being incarcerated the defendant established a positive relationship with she and her deceased husband. Another non-family member Debbie Kiernan opined that the defendant now has a "pure soul" and would be welcome to live with her.

b. Ed and Carol Claus testified via telephone that they reside in New Hampshire. They have had extensive contact with the defendant for the last 19 years. Through them they are convinced that the defendant has expressed genuine remorse and contrition.

c. Travis Pendergrass next testified that he is a reformed gang member. He further says that six (6) days before the murder the defendant expressed an interest in joining the gang.

He tried to dissuade him from the life. This witness has; in fact, changed his life to become a college educated sports photographer.

v. Section 921.1401(2)(e) The defendant's immaturity, impetuosity, failure to appreciate risks and consequences on/of his participation in the offense.

At the hearing on June 22, 2017, this Court heard from a variety of witnesses *none* of whom related anything about these factors as of the time of the offense (emphasis added).

vi. Section 921.1401(2)(f) The defendant's participation in the offense

This defendant admitted and was convicted of shooting an unarmed teenager. This defendant wielded a .22 caliber pistol and in a most cowardly fashion killed and wounded two teenagers. He has been the only participant held responsible for these crimes.

vii. Section 921.1401(2)(g) Familial or Peer pressure on the defendant's actions.

Other then what was adduced in 2(a) there are allegations that an older "gang leader" may have been a compelling influence over the defendant.

viii. Section 921.1401(2)(h) Defendant's prior criminal history.

At the hearing, this Court heard no testimony nor reviewed any evidence about the defendant's prior criminal history.

ix. Section 921.1401(2)(i) The effect of any characteristic of the Defendant's youth on his judgment.

At the hearing, this Court heard *no testimony nor reviewed any evidence* about the defendant's judgment at the time of the offense (emphasis added).

x. Section 921.1401(2)(j) The possibility of rehabilitating the Defendant.

a. The State of Florida presented the testimony of Lt. Mike Brown of Taylor Correctional Institution gave testimony regarding the supervision of this defendant as he was an

inmate serving his sentence. All officers are educated and keen to detect the indicia of gang activity in their facility. This defendant initially admitted to gang involvement but denied trying to recruit other members while at Taylor C.I. He had received minor disciplinary reports or write-ups for minor instances of disrespect. There was no record of this defendant's renunciation of his gang affiliation in prison records.

b. Former inmate Abraham Rosato (no relation) testified that while incarcerated, as a self-professed "gang-banger" the defendant would consul him to not be a trouble maker because he, the witness, had a release date. This witness was himself serving a sentence for 2nd degree murder and is now released from custody. He's quoted as saying "If I can change anybody can change".

c. The defendant's teenage son, Michael Rosado Jr. gave testimony. He is an outstanding young man. He was conceived at roughly the same time as his father murdered young Michael Reeves.

d. The fact that his father is a convicted murderer does not detract that fact. The sins of the father cannot be suffered upon the children. His father although incarcerated helped him through reading problems. He is soon to graduate as JROTC and is prepared to join the US Marines.

e. The defense presented the testimony of Ron McAndrew. He is the retired warden of Florida State Prison/Starke. Although he is an outspoken critic of capital punishment his review of the defendant's prison records reflects no gang tattoos nor present affiliation to said groups. Essentially, after a period of adjustment this defendant surrendered his criminal proclivities, becoming a "compliant prisoner". Further despite his life sentence he attained his GED, enrolled in masonry classes, and was assigned to the Honor Dormitory. In summary, he

was the "best inmate ever".

f. Dr. Heather Holmes, a psychologist, testified that this defendant is neither a psychopath nor a sociopath. He is not malingering nor faking her assessments of him. She opines that he has self-rehabilitated by taking courses in prison all the while knowing he may never be allowed to use them in a free setting. He has accepted the terrible responsibility for his crime. The life expectancy of a juvenile serving a life sentence is 50 years, 6 months.

g. In summary, this defendant in a most cowardly fashion took the life of a fellow teenager by shooting him from a moving car. He almost killed another boy for no other reason than some older, even more cowardly person, told him to. While serving 19 years into a life without parole sentence this defendant changed. Nothing can change what he did or the damage that he caused. He shortened the lives of those innocent people who survived either the direct attack or the effects of his conduct. No sentence of this court will ever absolve him. He is and will remain forever a convicted killer. But the key question for this court is what is required by the law; namely:

Is this person one of the extremely rare individual(s) of whom is irredeemably incorrigible and incapable of rehabilitation? That answer is No.

III. SENTENCE

It is for those reasons and incorporating the entire testimony and argument presented at the hearing and incorporated by reference that the defendant is to be re-sentenced as follows:

As to case number 1998-CF-717, having been previously found guilty of Count I, First Degree Premeditated Murder; Count II, Attempted Murder in the Second Degree with a Firearm; and Count III, Conspiracy to Commit First Degree Murder. this Court sentences you, MICHAEL PAUL ROSADO as follows:

1. **Count I,** FORTY (40) YEARS in the Department of Corrections followed by TWO (2) YEARS OF COMMUNITY CONTROL, followed by THREE (3) YEARS OF PROBATION.
2. **Count II,** SIXTEEN (16) YEARS in the Department of Corrections to run concurrent to the sentence in Count I.
3. **Count III,** SIXTEEN (16) YEARS in the Department of Corrections to run concurrent to Counts I and II.

The Defendant is entitled to review as contemplated by section 921.1042, Florida Statutes (2016) after 25 years in prison.

DONE AND ORDERED in Chambers at Inverness, Citrus County, Florida this 7th day of September, 2017.

RICHARD A. HOWARD
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following by U.S. Mail/courthouse mailbox delivery this 7th day of Sept., 2017.

Michael Ufferman, Esquire, Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, Florida 32308

Office of the State Attorney, via courthouse mailbox

Judicial Assistant/Deputy Clerk