

Third District Court of Appeal

State of Florida

Opinion filed July 26, 2017.
Not final until disposition of timely filed motion for rehearing.

No. 3D16-2742
Lower Tribunal Nos. 81-8037-A, 81-12617, 81-12733

Tyrone Rahmings,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Veronica Diaz, Judge.

Tyrone Rahmings, in proper person.

Pamela Jo Bondi, Attorney General, and Nikole Hiciano, Assistant Attorney General, for appellee.

Before SUAREZ, LAGOA, and FERNANDEZ JJ.

LAGOA, J.

Defendant, Tyrone Rahmings, appeals from the trial court's order denying his post-conviction motion filed pursuant to Florida Rule of Criminal Procedure 3.800. Defendant argues that reversal is warranted in light of Atwell v. State, 197 So. 3d 1040 (Fla. 2016). The State concedes that on the face of the motion the case should be remanded for further proceedings but contends that any remand should be without prejudice to the trial court conducting an evidentiary hearing to determine Defendant's age at the time of the offenses committed in case numbers F81-8037A, F81-12617, and F81-12733. We agree.

The record reveals a discrepancy exists regarding the Defendant's correct date of birth. The arrest affidavit contained in the record shows Defendant's date of birth as December 5, 1963. The Florida Department of Corrections, however, lists Defendant's date of birth as December 5, 1962. Because the offense dates for the Defendant's crimes range from March to May 1981, upon remand, the trial court shall hold an evidentiary hearing to determine the Defendant's correct date of birth and to determine whether Defendant was a juvenile at the time of the offenses. If Defendant's date of birth proves to be December 5, 1962, Defendant would be ineligible for relief under Atwell. However, if Defendant's date of birth proves to be December 5, 1963, the trial court shall resentence Defendant pursuant to the sentencing provisions enacted in chapter 2014-220, Laws of Florida. See Atwell, 197 So. 3d at 1050.

Reversed and remanded for evidentiary hearing.