

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NOS.: 1995-CF-000466-A-O  
1995-CF-001373-A-O

DIVISION: 17

vs.

BILLY BRADY, JR.,

Defendant.

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**ORDER GRANTING "MOTION TO CORRECT ILLEGAL SENTENCE,"  
SETTING RESENTENCING HEARING, AND APPOINTING COUNSEL**

**THIS MATTER** is before the Court on Defendant's *pro se* "Motion to Correct Illegal Sentence" filed in the above-styled cases on June 13, 2017, pursuant to Florida Rule of Criminal Procedure 3.800(a). After reviewing Defendant's Motion, the State's response, the court files, and the record, the Court finds as follows:

**PROCEDURAL HISTORY**

In 1995-CF-000466-A-O, Defendant was charged by Information with Attempted Murder of a Law Enforcement Officer with a Firearm. On September 29, 1995, he was found guilty of the lesser-included offense of Attempted Manslaughter with a Firearm. A motion for new trial was granted on November 27, 1995. He was subsequently charged by Information with Aggravated Battery Causing Great Bodily Harm on a Law Enforcement Officer with a Firearm. On July 9, 1997, he was found guilty as charged. On July 11, 1997, he was sentenced to life in the Department of Corrections with credit for 916 days time served. He appealed, and the Fifth District Court of Appeal affirmed. *Brady v. State*, 717 So. 2d 112 (Fla. 5th DCA 1998). The Mandate was issued on September 24, 1998.

On September 1, 2000, Defendant filed a motion for postconviction relief pursuant to Rule 3.850, alleging double jeopardy and trial court error. The motion was denied on January 5, 2001, and a motion for rehearing was denied on February 26, 2001. He appealed, and the Fifth District Court of Appeal *per curiam* affirmed. *Brady v. State*, 787 So. 2d 871 (Fla. 5th DCA 2001).

On March 1, 2007, Defendant filed a second motion for postconviction relief pursuant to Rule 3.850. The motion was denied as untimely on July 29, 2008.

On October 20, 2008, Defendant filed a motion to correct illegal sentence pursuant to Rule 3.800(a), alleging trial court error in increasing the degree level and sentence based upon the weapon enhancement, and double jeopardy prevented him from being sentenced to an offense greater than a second-degree felony. The motion was denied on October 4, 2010. He appealed, and the Fifth District Court of Appeal affirmed in part and reversed in part, holding that reclassification was not permissible, and remanding for resentencing. *Brady v. State*, 65 So. 3d 599 (Fla. 5th DCA 2011). On June 29, 2012, Defendant was resentenced to 23 years in the Department of Corrections with credit for 916 days time served, to run consecutive to 1995-CF-001373-A-O.

In 1995-CF-001373-A-O, Defendant was charged by Information with two counts of Attempted First Degree Felony Murder with a Firearm and Possession of a Firearm by a Minor. On May 1, 1996, he was found guilty of both counts of Attempted First Degree Felony Murder. On May 30, 1996, he was sentenced to concurrent terms of 30 years in the Department of Corrections, subject to a 3-year minimum mandatory term, with credit for 1 year, 112 days time served. He appealed, and the Fifth District Court of Appeal affirmed one conviction and reversed and remanded for the other conviction to be reduced to the lesser-included offense of aggravated battery. *Brady v. State*, 700 So. 2d 471 (Fla. 5th DCA 1997). The Florida Supreme Court quashed the decision in part. *State v. Brady*, 745 So. 2d 954 (Fla. 1999).

On November 16, 2001, Defendant filed a motion for postconviction relief pursuant to Rule 3.850. An evidentiary hearing was held on December 3 and 19, 2003. The motion was denied on April 7, 2004. He appealed, and the Fifth District Court of Appeal *per curiam* affirmed. *Brady v. State*, 913 So. 2d 611 (Fla. 5th DCA 2005).

#### ANALYSIS AND RULING

In the instant Motion, Defendant requests that the Court correct his sentence, alleging that he was a juvenile when he committed the offenses in these cases and his sentence lacks a review mechanism to afford him a meaningful opportunity for early release.

In its response, the State asserts, "I will leave it in the court's discretion to grant the defendant's request," acknowledging that Defendant may be entitled to application of the 25-year judicial review provision.

The Florida Supreme Court has noted that a de facto life sentence is not a requirement for review and emphasized that the focus in these juvenile cases should not be on the length of the sentence imposed, but rather on whether the sentence affords a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Henry v. State*, 175 So. 3d 675, 680 (Fla. 2015). "[T]he Eighth Amendment will not tolerate prison sentences that lack a

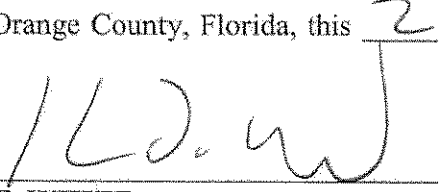
review mechanism for evaluating this special class of offenders for demonstrable maturity and reform in the future because any term of imprisonment for a juvenile is qualitatively different than a comparable period of incarceration is for an adult.” *Id.*

The Court finds that a resentencing hearing is warranted under chapter 2014-220, Laws of Florida, which has been codified in sections 775.082, 921.1401, and 921.1402, Florida Statutes. *See Waiters v. State*, No. SC16-2188, 2017 WL 2709774 (Fla. June 23, 2017); *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016); *Tarrand v. State*, 199 So. 3d 507 (Fla. 5th DCA 2016); *Andrevil v. State*, 226 So. 3d 867 (Fla. 4th DCA 2017).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant’s “Motion to Correct Illegal Sentence” is **GRANTED**.
2. Defendant shall be brought before this Court on the 27 day of March, 2018, at 1:30 a.m./p.m. in Courtroom 6A for a resentencing hearing.
3. The Office of the Public Defender for the Ninth Judicial Circuit of Florida is **APPOINTED** for purposes of representing Defendant at the resentencing hearing.
4. The Clerk of the Court shall promptly serve a copy of this Order upon Defendant, including an appropriate certificate of service.
5. This is a non-final, non-appealable Order. This matter is not ripe for appeal until completion of the hearing.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 2 day of February, 2018.

  
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**KEITH F. WHITE**  
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail or hand delivery to **Billy Brady, Jr.**, DOC# 466944, Okaloosa Correctional Institution, 3189 Colonel Greg Malloy Road, Crestview, Florida 32539-6708; **Lorraine Elizabeth De Young, Assistant State Attorney**, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801; and to **Assistant Public Defender**, Division 17, 435 North Orange Avenue, Suite 400, Orlando, Florida 32801, on this 5 day of February, 2018.



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Judicial Assistant