State, 761 So.2d 1055, 1061 (Fla.2000) ("[A] defendant is entitled to an evidentiary hearing on a postconviction relief motion unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient." (citing *Maharaj v. State,* 684 So.2d 726 (Fla.1996))).

AFFIRMED in part, REVERSED in part, and REMANDED.

TORPY, BERGER and EDWARDS, JJ., concur.

1

M.M., A Child, Petitioner,

v.

STATE of Florida, Respondent.

No. 5D16–2133.

District Court of Appeal of Florida, Fifth District.

Aug. 19, 2016.

Petition for Belated Appeal A Case of Original Jurisdiction.

Robert Wesley, Public Defender, and Molina Arena–Randall, Assistant Public Defender, Orlando, for Petitioner.

No appearance for Respondent.

PER CURIAM.

The petition for belated appeal is granted. A copy of this opinion shall be filed with the trial court and be treated as the notice of appeal from the April 26, 2016 sentence imposed in Case No. CJ16–1448, in the Circuit Court in and for Orange County, Florida. *See* Fla. R. App. P. 9.141(c)(6)(D).

PETITION GRANTED.

TORPY, BERGER and LAMBERT, JJ., concur.

2

Anthony WILLIAMS, Appellant,

v.

STATE of Florida, Appellee.

No. 5D15–3847.

District Court of Appeal of Florida, Fifth District.

Aug. 19, 2016.

Background: Following affirmance of convictions for first degree felony murder on direct appeal, defendant filed a petition for postconviction relief. The Circuit Court, Volusia County, Raul A. Zambrano, J., denied the petition. Defendant appealed.

Holding: On rehearing, the District Court of Appeal held that remand was warranted for circuit court to determine whether defendant's proposed parole release date implicated resentencing.

Reversed and remanded with directions.

Criminal Law ⇨1181.5(8)

District Court of Appeal would remand defendant's motion for postconviction relief for circuit court to determine whether defendant's proposed parole release date implicated resentencing, after he was sentenced as a 17-year-old to life in

gy cannot normally be determined without an evidentiary hearing, but also stating that an evidentiary hearing is not necessary when "it is so obvious from the face of the record that trial counsel's strategy not to present a [particular defense] is very clearly a tactical decision well within the discretion of counsel . . .").

prison, with a 25-year mandatory minimum term and eligibility for parole thereafter, on conviction for first degree felony murder; the record did not indicate what defendant's proposed parole release date was, and thus it was unclear whether defendant's sentence was effectively life imprisonment without the possibility of parole, in violation of defendant's Eighth Amendment rights and entitling him to resentencing. U.S.C.A. Const.Amend. 8; West's F.S.A. § 775.082(1) (1988); Laws 2014, ch. 2014–220, § 1.

Appeal from the Circuit Court for Volusia County, Raul A. Zambrano, Judge.

Anthony Williams, Arcadia, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Rebecca Roark Wall, Assistant Attorney General, Daytona Beach, for Appellee.

ON MOTION FOR REHEARING

PER CURIAM.

Anthony Williams seeks rehearing of this court's opinion affirming the denial of his motion for postconvicton relief. We grant rehearing, withdraw our previous opinion, and substitute the following in its place.

On March 1, 1990, following a jury trial, Williams was found guilty of first-degree felony murder and sentenced to life in prison.[1] He was a seventeen-year-old juvenile when he committed the offense. The statutory scheme at the time of the offense required a life sentence for capital felonies consisting of a twenty-five year minimum mandatory term, with parole eligibility after serving the mandatory portion of the sentence. § 775.082(1), Fla. Stat. (1988).

In 2015, Williams filed a pro se motion for postconviction relief, alleging his life sentence without the possibility of parole constituted an illegal sentence under *Miller v. Alabama*, —— U.S. ——, ——, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012), and its progeny. He claimed he was entitled to a resentencing hearing pursuant to chapter 2014–220, Laws of Florida. *See Horsley v. State*, 160 So.3d 393, 405–06 (Fla.2015) (holding the remedy for unconstitutional sentence under *Miller* is resentencing under chapter 2014–220, Laws of Florida). The trial court denied the motion, concluding that *Miller* did not strictly apply, but ordered, consistent with the 1993 statute, that the sentencing form be amended to include the provision for a twenty-five year mandatory minimum to be served prior to becoming eligible for parole.

Although the trial court's decision appeared correct at the time, while this appeal was pending, the Florida Supreme Court determined in *Atwell v. State*, 197 So.3d 1040, 41 Fla. L. Weekly S244, 2016 WL 3010795 (Fla. May 26, 2016), that *Miller* could be implicated even when a defendant is sentenced under an earlier version of the statute that included the possibility of parole. In so holding, the court noted that it "has—and must—look beyond the exact sentence denominated as unconstitutional by the Supreme Court and examine the practical implications of the juvenile's sentence, in the spirit of the Supreme Court's juvenile sentencing jurisprudence." *Id.* at 1047, at S247, at *6.

The practical implication of Atwell's sentence revealed that although he is parole eligible, "it is a virtual certainty that [he] will spend the rest of his life in prison."[2]

1. Williams' judgment and sentence were affirmed on appeal. *See Williams v. State*, 578 So.2d 1116 (Fla. 5th DCA 1991).

2. Atwell's presumptive parole release date was set for the year 2130, which is 140 years after he committed the offense and well be-

Id. at 1041, at S244, at *1. Thus, the court concluded that using the parole guidelines, "a sentence for first-degree murder under the pre—1994 statute is virtually guaranteed to be just as lengthy as, or the 'practical equivalent' of, a life sentence without the possibility of parole." *Id.* at 1048, at S247, at *8. The court held:

> Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder, as required by *Miller,* and that his sentence, which is virtually indistinguishable from a sentence of life without parole, is therefore unconstitutional.

Id. at 1041, at S244, at *1. The court determined the only way to correct Atwell's sentence was to resentence him in conformance with *Horsley* and chapter 2014–220 Laws of Florida. *Id.* at 1045–46, at S248.

In this case, Williams has not alleged what his presumptive parole release date ("PPRD") is or what his final review determined. And, the record is silent on this issue. Thus, it is unclear whether Williams' PPRD places him outside the relief afforded by *Miller* and *Atwell.* The date could be right around the corner or long after Williams' life expectancy. What is certain is that, like Atwell, the statutory scheme Williams was sentenced under provided only for the death penalty or life with the possibility of parole after twenty-five years. § 775.082(1), Fla. Stat. (1988). The trial court was not able to consider factors that would have allowed it to individually tailor Williams' sentence based on his juvenile status. *See Miller,* 132 S.Ct at 2469. As a result, if Williams' PPRD is calculated similarly to Atwell's, he will likely have no hope for release prior to his death, a consequence the United States Supreme Court has determined is unconstitutional. *See id.* (citing *Graham v. Florida,* 560 U.S. 48, 74–75, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)).

Accordingly, in light of *Atwell,* we reverse the order under review and remand for the trial court to determine whether Williams' PPRD and Commission Review Recommendation for parole release implicates resentencing pursuant to *Horsley* and chapter 2014–220, Laws of Florida.

REVERSED AND REMANDED, with directions.

BERGER, WALLIS and LAMBERT, JJ., concur.

OLUWABUKOLA OLAWOYE and Mulikatou Disu, Appellants,

v.

Olufisayo ARUBUOLA, Appellee.

No. 1D15–3774.

District Court of Appeal of Florida, First District.

Aug. 22, 2016.

Background: Action was brought arising out of a domestic altercation. After defendants failed to attend a pretrial conference, the Circuit Court, Duval County, Lawrence P. Haddock, J., struck their answer and affirmative defenses, and entered a default against them. Thereafter, the Circuit Court entered a money judgment in favor of plaintiff. Defendants appealed.

Holding: The District Court of Appeal, Bilbrey, J., held that trial court could not strike defendants' answer and affirmative defenses and enter a default against them

yond his probable life expectancy. *Atwell,* 197 So.3d at 1041, 41 Fla. L. Weekly at S244.