the consent of her parents is not in her best interest. See In re Doe, 153 So. 3d 925, 926 (Fla. 2d DCA 2014).

[6] The only proof Doe provided of her parents' whereabouts was her own testimony. But her testimony that her mother lived in Guatemala and that she had come to this country with only her father contradicted the allegations of her own sworn petition that she feared her mother would kick her out of the house if her mother found out she was pregnant. As such, she was untruthful with the court in her sworn testimony at the hearing or in her petition, which required her to sign an oath "swearing and affirming the truthfulness of the information herein" under the threat of "fines, imprisonment or both." This placed her credibility in question. The court stated both at the hearing and in its written order that it did not find some of Doe's testimony credible, and "[t]he circuit court sits in a far better position to assess a minor's demeanor and credibility than this [c]ourt can upon review of the transcribed hearing," In re Doe, 204 So. 3d 175, 176 (Fla. 1st DCA 2016).

We do note that this court is not insensitive to the difficult situation Doe finds herself in where the statute requires notice to and the consent of her parents while at the same time her parents may not be available to accompany her and provide such consent. However, upon the request of Doe's counsel, the trial court agreed that counsel could file a motion for reconsideration and either present a sworn affidavit from either of Doe's parents or present either parent via video conference to indicate consent to the procedure. The mother's unsworn affidavit was filed, and a second hearing was held. A woman representing herself as Doe's mother appeared,[2] but she initially gave a different name than that of Doe's mother and needed to be corrected by Doe. The woman offered no other proof that she was Doe's mother. The trial court ruled that it could not confirm that the woman who appeared was in actuality Doe's mother, and Doe does not challenge that ruling on appeal.

Accordingly, based on the evidence presented below, the trial court did not abuse its discretion in finding that Doe did not meet her burden of establishing by clear and convincing evidence either that she was sufficiently mature to make the decision to terminate her pregnancy without notice to or the consent of her parents or that the requirements of the statute were not in her best interest. We, therefore, must affirm the order of the trial court dismissing the petition.

Affirmed.

VILLANTI and LaROSE, JJ., Concur.

Keith Hartley WITTEMEN, Appellant,

v.

STATE of Florida, Appellee.

Case No. 2D19-292

District Court of Appeal of Florida, Second District.

Opinion filed August 21, 2020.

Background: Defendant, who was convicted of first-degree premeditated murder

2. It is unclear from the record before us whether the woman appeared via video or only by audio.

based on his actions at age 17 and who was sentenced to life without the possibility of parole for 25 years, filed motion for postconviction relief under rule governing motions to vacate, set aside, or correct a sentence. After initially granting defendant's motion, the Circuit Court, 20th Judicial Circuit, Charlotte County, George Richards, J., granted State's untimely motion for rehearing based on intervening change in decisional law, vacated its prior order granting resentencing, and denied defendant's motion. Defendant appealed.

Holdings: The District Court of Appeal, Casanueva, J., held that trial court lacked jurisdiction to rescind order granting motion to vacate, set aside, or correct sentence on basis of untimely rehearing motion.

Reversed and remanded with instructions.

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Trial court's order granting defendant's postconviction motion to vacate, set aside, or correct his sentence of life in prison without possibility of parole for 25 years was final and appealable, and, thus, trial court lacked jurisdiction to rescind its order on State's untimely motion for rehearing; defendant did not seek relief under rule governing motions to correct, reduce, or modify sentences, which would not have resulted in final appealable order. Fla. R. Crim. P. 3.800(a), 3.850.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Charlotte County; George C. Richards, Judge.

Allison Ferber Miller, Clearwater, for Appellant.

CASANUEVA, Judge.

On December 13, 2019, this court affirmed the denial of Keith Hartley Wittemen's motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The mandate issued on January 15, 2020. However, in a subsequent motion to recall the mandate, Mr. Wittemen argued that the postconviction court lacked jurisdiction to deny his motion. Upon careful consideration, we agree. We now reverse the postconviction court's order and remand for resentencing.

On September 3, 1994, at the age of seventeen, Mr. Wittemen was charged with first-degree premeditated murder. A jury found Mr. Wittemen guilty as charged, and he was sentenced to life in prison without the possibility of parole for twenty-five years.

On May 12, 2017, Mr. Wittemen filed a rule 3.850 motion for postconviction relief, alleging that his sentence was unconstitutional in accordance with Miller v. Alabama, 567 U.S. 460, 489, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (holding that the Eighth Amendment of the United States Constitution is violated when a court imposes on a juvenile homicide offender a mandatory sentence of life in prison without the possibility of parole), and Atwell v. State, 197 So. 3d 1040, 1041 (Fla. 2016) (holding that under Florida's existing parole system, a sentence of life with the possibility of parole after twenty-five years is indistinguishable from a life without parole sentence because Florida's parole system does not provide for individualized consideration of a juvenile's status at the time of the offense). Relying on Miller and Atwell, the postconviction court granted Mr. Wittemen's motion on October 30, 2017, concluding that Mr. Wittemen was entitled to a resentencing hearing, because Florida's parole system did "not provide

the individualized sentencing considerations required by case law and statute."

Before Mr. Wittemen's resentencing hearing could take place, the State, relying on the Florida Supreme Court's decision in State v. Michel, 257 So. 3d 3 (Fla. 2018), moved for reconsideration of the postconviction court's order, arguing that resentencing was not required because Mr. Wittemen's sentence was not unconstitutional according to the new case law. After consideration of Michel, in which the Florida Supreme Court held that "juvenile offenders' sentences of life with the possibility of parole after 25 years do not violate the Eighth Amendment of the United States Constitution," the postconviction court found that Mr. Wittemen's sentence was lawful and that the court lacked jurisdiction to modify his sentence. Id. at 4. The court granted the State's motion for reconsideration, vacated the order granting a resentencing hearing, and denied Mr. Wittemen's motion for postconviction relief.

The facts of this case are substantially similar to the facts in Croft v. State, 295 So. 3d 307 (Fla. 2d DCA 2020). In Croft, the defendant, like Mr. Wittemen, was sentenced to life in prison without the possibility of parole for twenty-five years for a murder he committed as a minor. Id. at 308. Croft later filed a rule 3.850 motion, arguing that he was entitled to resentencing based on case law from the United States and Florida Supreme Courts. Id. at 308. The postconviction court granted Croft's motion and directed that a resentencing hearing be scheduled. Id. at 308. But before resentencing could occur, the Florida Supreme Court issued its decision in Michel. Id. As in this case, the State moved for reconsideration of the postconviction court's order. Id. at 308. After a hearing, the motion for reconsideration was granted, and Croft's rule 3.850 motion was denied. Id. at 309.

As we explained in Croft, the decision to file a rule 3.850 motion was significant. Had Mr. Wittemen filed his postconviction motion under Florida Rule of Criminal Procedure 3.800(a), rather than rule 3.850, he would not be entitled to relief. See Morgan v. State, 293 So. 3d 1081, 1085 (Fla. 2d DCA 2020) ("[A]n order granting a rule 3.800(a) motion is not a final appealable order. Thus, the postconviction court had jurisdiction at the time the State sought reconsideration of the ruling [granting a request for resentencing]; the ruling was an interlocutory order which the court had inherent authority to reconsider upon request by a party."), review granted, No. SC20-641, 2020 WL 3494396 (Fla. June 29, 2020).

However, because Mr. Wittemen filed a rule 3.850 motion, the postconviction order granting Mr. Wittemen's motion was a final appealable order. See Croft, 295 So. 3d at 309; see also Taylor v. State, 140 So. 3d 526, 528 (Fla. 2014) ("[A]n order disposing of a [rule 3.850] motion which partially denies and partially grants relief is a final order for purposes of appeal, even if the relief granted requires subsequent action in the underlying case, such as resentencing."). The postconviction court therefore lacked jurisdiction to rescind its original order on the basis of an untimely rehearing motion by the State. See Fla. R. Crim. P. 3.850(j) ("Any party may file a motion for rehearing of any order addressing a motion under this rule within 15 days of the date of service of the order.").

Accordingly, we reverse the postconviction court's December 2018 order, reinstate the October 2017 order, and remand for the postconviction court to conduct a resentencing hearing. We note, as we did in Croft, 295 So. 3d at 309 (quoting State v. Fleming, 61 So. 3d 399, 400 (Fla. 2011)),

that "the decisional law effective at the time of the resentencing applies." State v. Fleming, 61 So. 3d 399, 400 (Fla. 2011). Thus, it is possible that Mr. Wittemen may still receive the same sentence upon resentencing.

Reversed and remanded with instructions.

BY ORDER OF THE COURT:

Upon consideration of the relief sought in Appellant's motion to recall the mandate, filed April 9, 2020, relief is granted, and this court's prior opinion dated December 13, 2019, is withdrawn. The attached opinion is issued in its place. No further motions for rehearing will be entertained in this appeal.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

MARY ELIZABETH KUENZEL, CLERK

MORRIS and ROTHSTEIN-YOUAKIM, JJ., Concur.

1

William R. NELSON, Appellant,

v.

STATE of Florida, Appellee.

Case No. 2D20-930

District Court of Appeal of Florida, Second District.

Opinion filed September 16, 2020.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Polk County; Donald G. Jacobsen, Judge.

William R. Nelson, pro se.

PER CURIAM.

Affirmed. See Johnson v. State, 60 So. 3d 1045 (Fla. 2011); Ratliff v. State, 914 So. 2d 938 (Fla. 2005); Wright v. State, 911 So. 2d 81 (Fla. 2005); Adaway v. State, 902 So. 2d 746 (Fla. 2005); State v. Whitehead, 472 So. 2d 730 (Fla. 1985); Smart v. State, 124 So. 3d 347 (Fla. 2d DCA 2013); Nelson v. State, 965 So. 2d 134 (Fla. 2d DCA 2007) (table decision); Burttram v. State, 846 So. 2d 1201 (Fla. 2d DCA 2003); Phillips v. State, 807 So. 2d 713 (Fla. 2d DCA 2002); Gonzalez v. State, 50 So. 3d 633 (Fla. 1st DCA 2010); Lykins v. State, 894 So. 2d 302 (Fla. 3d DCA 2005); Enriquez v. State, 885 So. 2d 892 (Fla. 3d DCA 2004); Thomas v. State, 778 So. 2d 429 (Fla. 5th DCA 2001).

CASANUEVA, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.

2

Trevontae J. SHULER, Appellant,

v.

STATE of Florida, Appellee.

Case No. 2D20-610

District Court of Appeal of Florida, Second District.

Opinion filed September 25, 2020.

Background: After affirmation on appeal of multiple convictions and sentences, defendant filed a motion to correct illegal sentence. The Circuit Court, 10th Judicial Circuit, Polk County, Larry Helms, J., denied the motion. Defendant appealed.