

FLORIDA THIRD DISTRICT COURT OF APPEAL

Christian Fresquet v. State of Florida

No. 3D25-0627 · No. 3D25-0627 · Decided June 18, 2025

SUMMARY

The Florida Third District Court of Appeal affirmed the denial of Christian Fresquet's postconviction relief under Florida Rule of Appellate Procedure 9.141(b)(2). The court concluded that cited decisions concerning Apprendi, Blakely, and Erlinger did not support retroactive relief or vacatur of the appellant's sentence.

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed June 18, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D25-0627 Lower Tribunal No. F04-33360 _____ Christian Fresquet, Appellant, vs. State of Florida, Appellee. An Appeal under Florida Rule of Appellate Procedure 9.141 (b)(2) from the Circuit Court for Miami-Dade County, Tanya Brinkley, Judge.

Christian Fresquet, in proper person. James Uthmeier, Attorney General, for appellee. Before MILLER, GORDO and BOKOR, JJ. PER CURIAM. Affirmed. See *Ford v. State*, 402 So. 3d 973, 981 (Fla. 2025) (“Erlinger was a direct-appeal case—not a postconviction case like *Ford*’s—and it involved required jury findings regarding an element. Based on these fundamental distinctions, it is clear that Erlinger provides no support for vacating *Ford*’s death sentences.”); *State v. Johnson*, 122 So.

3d 856, 866 (Fla. 2013) (analyzing the relevant test for applying a constitutional rule retroactively and concluding that “the new constitutional rule announced in *Blakely* does not apply retroactively to sentences or resentences that were final when it issued”); *Hughes v. State*, 901 So. 2d 837, 848 (Fla. 2005) (concluding *Apprendi* does not apply retroactively); *Figarola v. State*, 841 So.

2d 576, 577 n.3 (Fla. 4th DCA 2003) (“*Apprendi* was characterized as a procedural rule by the Supreme Court. Since announcing *Teague*, the Supreme Court has not given retroactive effect to any decisions announcing new constitutional rules of criminal procedure.” (internal citation omitted)); *Luton v. State*, 934 So. 2d 7, 10 (Fla. 3d DCA 2006) (“To raise the issue timely, and thus preserve the point for appellate review, the defendant needed to request a jury trial on

sentencing, or object to the trial judge sitting as the trier of fact, prior to the sentencing hearing.”); see also *Theophile v. State*, 967 So.

2d 948, 949 (Fla. 1st DCA 2007) (“Relief under rule 3.800(a) is precluded where an evidentiary determination is required. For this reason, 2 Appellant could not demonstrate entitlement to relief under rule 3.800(a) without citing to facts established in the trial transcript or otherwise apparent on the face of the record.” (internal citation omitted)); *Plott v. State*, 148 So.

3d 90, 94 (Fla. 2014) (“A claim of error under *Apprendi* and *Blakely* is subject to a harmless error analysis.”). 3