

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JEAN C. NOEL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-4247

[February 21, 2018]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carlos A. Rodriguez, Judge; L.T. Case No. 07-009128-CF10A.

Carey Haughwout, Public Defender, and Tatjana Ostapoff, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Melynda L. Melear, Assistant Attorney General, West Palm Beach, for appellee.

GROSS, J.

The Supreme Court held that Jean Claude Noel was “entitled to a resentencing.” *Noel v. State*, 191 So. 3d 370, 380 (Fla. 2016). On remand to this court, we sent the case to the circuit court for resentencing. *Noel v. State*, 192 So. 3d 90, 91 (Fla. 4th DCA 2016).

Back in the circuit court, a public defender was appointed to represent Noel. The newly appointed counsel noticed a status hearing for November 2, 2016, before the circuit court.

At the status hearing, Noel was resentenced by the court. Defense counsel adequately preserved an objection to sentencing at a status conference not noticed as a sentencing hearing.

A defendant has “the right to notice of the sentencing hearing and notice that any new sentence is appealable.” *Stang v. State*, 24 So. 3d 566, 570 (Fla. 2d DCA 2009); *see also Frison v. State*, 76 So. 3d 1103, 1104 (Fla. 5th DCA 2011). “A defendant must receive notice *before* the

sentencing hearing, so that defense counsel can prepare any challenges to the evidence the state plans to offer in support.” *Brown v. State*, 189 So. 3d 837, 840 (Fla. 4th DCA 2015). An essential part of due process is that “any relief granted at a hearing be within the kind of relief sought by the notice given for hearing.” *Khan v. Dep’t of Revenue*, 901 So. 2d 992, 993 (Fla. 4th DCA 2005).

The November 2, 2016 hearing was noticed as a status check, not a sentencing.

We reverse the sentence and remand to the circuit court for *de novo* resentencing at a noticed sentencing hearing. *See State v. Fleming*, 61 So. 3d 399, 406 (Fla. 2011).

Reversed and remanded.

FORST and KUNTZ, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.