Case Law Update
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Supreme Court of Florida

State v. Purdy, SC17-843 (Aug. 30, 2018)

The Florida Supreme Court addressed the following certified question from the Fifth District Court of Appeal:

> WHEN A JUVENILE OFFENDER IS ENTITLED TO A SENTENCE REVIEW HEARING, IS THE TRIAL COURT REQUIRED TO REVIEW THE AGGREGATE SENTENCE THAT THE JUVENILE OFFENDER IS SERVING FROM THE SAME SENTENCING PROCEEDING IN DETERMINING WHETHER TO MODIFY THE OFFENDER'S SENTENCE BASED UPON DEMONSTRATED MATURITY AND RESPONSIBILITY?

The Court issue an opinion of three justices, with one justice concurring in result only, and three justices dissenting. The opinion of the three justices answered the certified question in the negative, and quashed the Fifth District's decision "which held that chapter 2014-220, Laws of Florida, requires modification of the overall sentence whenever a juvenile establishes rehabilitation at a statutorily required sentence review hearing."

Purdy was convicted in 1997 of first-degree murder, armed robbery and armed carjacking. At that time, he was sentenced to life without parole for the murder and approximately 9 1/3 years for the other offenses. The nine-year sentences were concurrent with one another but consecutive to the life sentence.

In 2015, Purdy challenged the life sentence for the murder, but did not challenge the other sentences. Consistent with the then recently enacted juvenile sentencing statutes, the trial court reduced the life sentence to 40 years and then conducted a juvenile sentencing review hearing and determined that Purdy demonstrated rehabilitation and that he was fit to reenter society. The judge then further reduced the 40-year sentence to 20 ½ years, the amount of time already

served, followed by 10 years of probation. The trial court concluded that the other sentences were not subject to review under the 2014 juvenile sentencing statutes, so the defendant was returned to prison to serve the remaining terms of those sentences. On appeal, the Fifth District ordered to the trial court to conduct a further hearing to determine whether to modify the sentence based on maturity and rehabilitation, and certified the above-noted question as one of great public importance.

Three justices concluded that "the plain language of the juvenile sentencing statutes does not provide for aggregation of sentences at juvenile sentencing review," and therefore quashed the Fifth District's decision. One justice concluded in result only, with no written opinion. The remaining three justices dissented.

Kearse v. State, SC18-458 (Aug. 30, 2018)

Kearse, who was sentenced to death after a unanimous recommendation by the jury, was denied relief under Hurst v. Florida, 136 S.Ct. 616 (2016), because Hurst did not apply retroactively to his sentence.

Booker v. State, SC18-541 (Aug. 30, 2018)

Booker appealed the denial of post-conviction relief based on Hurst v. Florida. Because similar claims had previously been raised in a habeas petition in the Florida Supreme Court, and because all of the claims related to retroactivity of Hurst, the current claim were procedurally barred.

Lightbourne v. State, SC18-677 (Aug. 30, 2018)

Lightbourne's claims related to Hurst v. Florida. Similar claims had been denied in a prior proceeding in the Florida Supreme Court, and as they all related to retroactivity of Hurst, his claims were deemed procedurally barred.

First District Court of Appeal

Macomber v. State, 1D16-1828 (Aug. 30, 2018)

In an appeal from convictions for capital sexual battery and lewd molestation related to the abuse of the defendant's girlfriend's seven-year old daughter, the First District held that "the trial court abused its discretion by preventing the jury from hearing K.M.'s full account of the circumstances surrounding the abuse."

K.M., in her pretrial statement, asserted that the defendant abused both her and A.M. at the same time. The trial court, on the State's motion, excluded references to A.M., apart from the fact that K.M. said that A.M. was present. A.M., however, denied observing any abuse or being abused, and the jury was prevented from hearing this as a result of the State's motion to exclude. The State's argument for exclusion was that it would have come in through cross-examination of K.M. by defense counsel under an inadmissible theory of impeachment, as it would have constituted impeachment as to a collateral matter.

The First District found the evidence to be relevant, as it went to the credibility of the accuser. Further, it was not a "collateral" matter. Rather, any crime that may have been committed as to A.M. would have been inextricably intertwined with the charged offense, and it would therefore have been necessary to provide an adequate description of the charged offense.

One judge dissented as to this issue.

Campbell v. State, 1D16-5039 (Aug. 30, 2018)

The trial court correctly denied a Rule 3.800(b) motion seeking an additional 12 days of jail credit where the documentation attached to the defendant's motion indicated that the arrest for the offense occurred on December 5th, not November 23rd, as the defendant had alleged.

Veach v. State, 1D17-711 (Aug. 30, 2018) (on motion for rehearing)

The defendant appealed a conviction for conspiracy to tamper with a witness. His former girlfriend was the codefendant. The defendant moved in limine to exclude portions of a jail phone call. The First District concluded that the trial court did not err in denying the motion. In the portion of the phone call at issue, which includes incriminating references to an offense not charged, the defendant identifies himself. As other portions of the phone call included incriminating statements as to the charged offense, the subsequent portion in which the defendant identifies himself was relevant and admissible, even though it was intertwined with references to a collateral offense. The Court rejected the defendant's argument that identity was not at issue.

Veach also argued that the trial court erred by limiting cross-examination of his former girlfriend, when the court refused to permit the defense to ask her "whether she intended to commit a crime when Appellant called her from jail." The

phone call in question had included a request by the defendant for his former girlfriend to contact the victim – evidence related to the tampering charge. This was clearly a defensive matter and beyond the scope of cross-examination. Additionally, any error was harmless, as the trial court had been made aware, based on the prosecutor's discussion with the girlfriend's counsel, that she intended to assert her right against self-incrimination if the questioning had been allowed.

Dawson v. State, 1D17-4068 (Aug. 30, 2018)

The defendant entered a guilty plea to the charges of possession of marijuana and possession of a controlled substance and reserved the right to appeal the denial of his motion to suppress. The First District held that the arrest was supported by probable cause and the subsequent search was lawful.

An off-duty officer in a nightclub observed the defendant smoking what he believed to be marijuana. That officer contacted a police investigator who entered the club in plain clothes and approached the defendant and other individual whom the off-duty officer had described. The investigator soon smelled burnt marijuana. "He isolated the smell to the area occupied by the two men. A short time later, he witnessed Dawson smoking what he believed was a marijuana cigarette." Backup officers then escorted Dawson outside the club where he was arrested. In a search incident to the arrest, the arresting officers discovered an unsmoked marijuana blunt and a baggie filled with a controlled substance.

Contrary to the defendant's argument, probable cause in this case was not based on the smell of marijuana in the general area of a group of people. Two officers observed the defendant smoking what appeared to be a marijuana cigarette. Thus, the appellate court distinguished cases in which the only evidence was the smell of marijuana coming from an area occupied by several individuals.

Coby v. State, 1D18-306 (Aug. 30, 2018)

Coby pled no contest to charges of possession of a firearm by a convicted felon and possession of a controlled substance. He reserved the right to appeal the denial of a motion to suppress evidence. The First District affirmed and found that officers had reasonable suspicion for the traffic stop which resulted in the search.

A BOLO had been issued for a dark SUV, and Coby's vehicle, a dark SUV, was spotted about one mile away from the reported scene of a shooting about 2-3 minutes after the BOLO. The SUV was also headed in the same direction as had

been reported in the BOLO, and it was 4:15 a.m., and no other cars were on the road. A deputy sheriff followed the vehicle and contacted dispatch for additional information. The deputy was advised that the suspect vehicle had "aftermarket bumpers," and the SUV being followed had such bumpers.

The deputy then stopped the vehicle and smelled marijuana. He administered Miranda warnings and the defendant admitted he had a gun and drugs. The officer searched the SUV and located both items. Further investigation resulted in the determination that Coby was not involved in the shooting.

The motion to suppress was directed solely towards the initial stop of the vehicle. The facts set forth above resulted in the Court's conclusion that the officer's reliance on the BOLO was proper, given the length of time at issue, the distance from the offense, the specificity of the description of the vehicle, the lack of other vehicles, and the time of the stop.

Second District Court of Appeal

Miller v. State, 2D17-3931 (Aug. 31, 2018)

The Second District struck one ground from a probation revocation order but affirmed the revocation. "'When a trial court relies on both proper and improper grounds for revocation but it is clear from the record that the trial court would have revoked probation even without the existence of improper grounds, this court and others have affirmed the revocation of probation and remanded for entry of a corrected revocation order.'"

Tidwell v. State, 2D18-545 (Aug. 31, 2018)

In a post-conviction appeal from a 1998 case, the Second District reversed and remanded the trial court's order denying relief without prejudice to the defendant, if able to do so in good faith, to file a facially sufficient motion under Rule 3.800(a), setting forth a claim under Heggs v. State, 759 So. 2d 620 (Fla. 2000).

Heggs had found 1995 amendments to the sentencing guidelines to be unconstitutional for having violated the single-subject requirement of the Florida Constitution. The Second District cited earlier case law for the point that a Heggs claim could be raised in a Rule 3.800(a) motion if the claim was apparent on the face of the trial court record. The Court further noted the controlling principle that if the person's sentence could have been imposed under the 1994 sentencing guidelines

without a departure, the sentence should be affirmed. And, the doctrines of the law of the case and collateral estoppel will not apply to a Rule 3.800(a) motion if the sentence received exceeds that which could lawfully have been imposed.

Third District Court of Appeal

Hernandez v. State, 3D17-1636 (Aug. 29, 2018)

The State conceded that several grounds of probation violation were incorrectly listed in the order revoking probation. The Third District affirmed the revocation of probation and remanded for entry of a corrected order, noting that the defendant need not be present for the entry of the corrected order.

Sexton v. State, 3D18-1500 (Aug. 29, 2018)

The Third District denied a prohibition petition based on the Stand Your Ground law.

In 2017, the legislature amended the law to place the burden of proof on the State at a stand-your-ground hearing. The Third District recently held, in Love v. State, 247 So. 3d 609 (Fla. 3d DCA 2018), that the amendment regarding the burden of proof did not apply retroactively to offenses committed prior to the effective date of the amendment. Sexton's motion was denied in the trial court, and the trial court, after Love, applied the old burden of proof, which rested on the defendant. Sexton's petition in the Third District challenged only the burden of proof relied upon by the trial court; it did not otherwise argue the merits of the case.

The Third District relied on its own prior decision in Love. The Court denied Sexton's motion to hold this proceeding in abeyance pending the Florida Supreme Court's disposition of Love, as to which review on the merits has already been granted. The Third District also noted conflict between Love and a decision of the Second District. Rather than certify conflict as the Third District did in Love, the Third District noted that Sexton was "not without potential remedy as he is within the appellate pipeline on this issue."

Fourth District Court of Appeal

T.T. v. State, 4D18-442 (Aug. 29, 3018)

This case presented "the question of whether the plain touch exception to the Fourth Amendment permits an officer, without a warrant, to seize objects felt during a weapons search, when the objects are not weapons and there is insufficient evidence of contraband. It does not."

During a traffic stop, T.T., a rear seat passenger, was observed with slurry speech and bloodshot eyes. There was no suspicion of criminal activity, and T.T. was observed, nervous and fidgeting with his waistband. The officer had T.T. exit the vehicle and did a pat-down search for weapons. In the scrotal area, the officer felt two hard, cylindrical objects, which were believed to be containers. The officer could not feel what was inside and did not smell any drugs. Upon seizure of the containers, a leafy substance that turned out to be marijuana was discovered. The officer based the seizure on his experience in drug cases, from which he concluded that juveniles concealed drugs in such containers.

Explaining why the "plain feel" doctrine was not applicable in this case, the Fourth District stated: "Here, the state failed to elicit evidence regarding the officer's experience with drug containers and his prior use of tactile perception to identify contraband. The officer did not feel any plantlike material in T.T.'s pants. Moreover, he did not testify regarding his experience with containers during drug arrests." "Although the officer testified that juveniles hide drugs in the scrotal area, his conclusory statement without more is the type of bare, subjective statement that this Court has held to be insufficient to overcome the protections of the Fourth Amendment."

Twigg v. State, 4D17-1694 (Aug. 24, 2018) (on motion for rehearing)

Twigg appealed convictions for battery on an emergency medical care provider and battery following an altercation between Appellant and staff members at a VA hospital. The Fourth District concluded that the State failed to prove the charge of battery on an emergency medical care provider.

When a battery is committed on an emergency medical care provider, the battery is reclassified from a misdemeanor to a third-degree felony. The Fourth District reviewed the definitions of key terms, including "emergency medical care provider," under section 784.07(1)(a), Florida Statutes, and "registered nurse" in

chapter 401, as that term is included in the definition of emergency medical care provider. "Registered nurse" includes "professional" nursing, which is distinguished from "practical" nursing. The evidence in this case failed to establish that the victim was a "professional nurse," and was therefore not a "registered nurse" for purposes of the reclassification based on an emergency medical care provider.

Nor did the evidence establish another component of "emergency medical care provider" – "any person authorized by an emergency medical service license under chapter 401." The victim in this case worked in a hospital, not a medical transportation service.

Nor did the evidence establish that the victim worked in the "emergency department" of the hospital. When the nurse was spit upon, she was providing services in the psychiatric department of the hospital.

Although defense counsel failed to move for judgment of acquittal, this was one of the rare instances where a claim of ineffective assistance of counsel was apparent on the face of the record and could therefore be raised on direct appeal.

A second claim of ineffective assistance of counsel, however, was not apparent on the face of the record and could not be reviewed on direct appeal. The defendant argued that counsel was ineffective for not seeking a self-defense instruction as to the same charge, based on the theory that the defendant was protecting himself from being illegally detained under the Baker Act for civil commitment. While the evidence would have supported such an instruction if requested, it was also possible that counsel had strategic reasons for not making the request. The defense at trial was an insanity defense, and a self-defense instruction would have required the defense to argue, in the alternative, that the defendant knew what he was doing when engaging in an act of self-defense, and that would have undermined the insanity defense.

Fifth District Court of Appeal

Beshears v. State, 5D16-4360 (Aug. 31, 2018)

Beshears appealed multiple convictions and the Fifth District reversed, based on the trial court's failure to grant his pro se motions to appoint an expert to evaluate "a possible insanity defense after he was prescribed several medications while at the hospital the night before, and the night of, the offense."

The defendant was representing himself since the beginning of the case. The judge denied his motions a few days prior to the trial, reasoning that a defendant who was truly insane at the time of the offense would be "unable to meaningfully consult with an expert in the preparation of a defense." The State conceded that it was error not to appoint the expert, but argued that any error was harmless, because the defendant had not been taking his medication at the time. There was evidence that the defendant was intoxicated at the time of the offense. The State, on appeal, referred to websites for the proposition that the defendant's medications could not be taken with alcohol. As appellate review is limited to the trial court record, such websites were beyond the scope of the record and beyond the scope of appellate review. There was no record evidence as to this.

Davis v. State, 5D17-745 (Aug. 31, 2018)

In an appeal from convictions for first-degree murder and other offenses, the defendant argued that his rights under the speedy trial rule had been violated when he was not brought to trial within 175 days of his arrest. The Fifth District disagreed and concluded that he was not arrested on the date he alleged to have been arrested. Rather, he, along with other individuals, was questioned at length by a detective as part of an investigatory detention, which did not constitute an arrest for purposes of the speedy trial rule.

Officers responded to a shooting and robbery. Several occupants of the premises, including the defendant, exited the house after a 1 ½ hour standoff with a SWAT team. Of the five males present, one, not the defendant, was identified as the getaway driver. All five males were handcuffed and taken to the police station for questioning.

Davis agreed to speak to the detective and consented to gunshot residue and DNA testing. He was in an interview room but was not advised that he was free to leave. A uniformed guard stood outside the door to the room and would not have let him leave. At the end of the interview, four-to-six hours later, the defendant was told that he was not under arrest and that he was free to leave. The detective offered him transportation, which he declined. The defendant was not formally arrested until June 17, 2015, more than one year after the date on which he was interviewed at the station.

The Fifth District evaluated the question of whether the above facts constituted an arrest based on the Florida Supreme Court opinion of Melton v. State, 75 So. 2d 291 (Fla. 1954). First, it was not the detective's intent to effect an arrest

on the date of the interview. Second, Davis was actually seized and detained. Third, there was no communication on the date of the interview suggesting an intent to arrest. There was no booking or fingerprinting, and he was told at the end of the interview that he was not under arrest. The fourth element of Melton focuses on the understanding of the individual who was subject to the detention as to whether there was an arrest. Davis argued that he had a reasonable belief that he had been arrested based upon the above facts. The Fifth District upheld that trial court's analysis as to this element focusing on several facts: the defendant was cooperative and agreed to the interview; he was not presented with any evidence that an arrest was contemplated; and he was released that day.

The Fifth District, although affirming the trial court's denial of the speedy trial motion, wrote further to express concerns about the Melton test. The Court noted that all elements of Melton must be satisfied in order to prevail on a claim that an arrest occurred. Moreover, two of those elements focus on the subjective intents of the participants – the officer and the person being detained. The Court believed that a "totality of the circumstances" test would be better. However, the Court recognized that it was bound by Florida Supreme Court precedent. Thus, the Fifth District certified to the Florida Supreme Court the following question, as one of great public importance:

> Should the determination of whether an arrest has occurred for speedy trial purposes be based on an objective consideration of the totality of the circumstances, including but not limited to: (1) whether the person was detained with the intent to effect an arrest under a real or pretended authority; (2) whether there was an actual or constructive seizure or detention by someone with the present power to control the person detained; (3) whether there was a communication by the detaining officer to the person whose detention is sought of an intention or purpose then and there to effect an arrest; and (4) whether a reasonable person in the defendant's position would have understood that he or she was under arrest?

Taylor v. State, 5D17-2236, 5D17-2237 (Aug. 31, 2018)

The Court issued a per curiam affirmance without written opinion. One judge wrote a concurring opinion in which two concerns were noted. The case involved a plea in which the defendant was attempting to reserve the right to appeal an order

denying a suppression motion. The concurring opinion expressed the concern that the trial court judge did not rule on the defendant's request to make a finding that the motion in question was "dispositive," as such a finding would be necessary to support the right to appeal when a defendant enters a guilty or nolo plea. Second, the concurring opinion expressed a concern about the State's refusal to agree that the motion was dispositive when it was clearly a dispositive motion.

Stringfield v. State, 5D17-2798 (Aug. 31, 2018)

The Fifth District reversed a revocation of probation based on a new law violation because there was no evidence that the defendant knowingly drove with a suspended or revoked license under section 322.34, Florida Statutes.

There was no evidence that the defendant had previously been cited, which would have satisfied the "knowing" element of the offense. The State argued in the trial court that the defendant "should have been notified" in one of several ways, but never presented any evidence as to such notification.

Taplin v. State, 5D17-3135 (Aug. 31, 2018)

Taplin pled guilty to failure to register as a sex offender. The trial court found that electronic monitoring was mandatory under section 948.30(3)(c), Florida Statutes. Taplin was 17 at the time of the offense.

The Fifth District quoted and discussed the language in section 948.30(3)(c) and concluded that it has two components – (1) a qualifying offense; and (2) that the victim was 15 or younger and the defendant was 18 or older. Both of those elements had to be present for mandatory monitoring to be imposed.

Santiago v. State, 5D17-3394 (Aug. 31, 2018)

The trial court granted post-conviction relief with respect to a juvenile life sentence.

Santiago was 16 at the time of the offense for which he was convicted – second-degree murder with a firearm, for which he received a sentence of 35 years. He argued that due to his juvenile status, he was entitled to a provision for judicial review and a full resentencing hearing. The trial court granted the judicial review request, but denied the request for a full resentencing based on the conclusion that the 35-year sentence was not unconstitutional.

The Fifth District reversed. The constitutionality of the sentence imposed was not based solely on whether it was a de facto life sentence. The Fifth District cited its earlier opinions to the effect that a term-of-years juvenile sentence for a non-homicide offender that does not provide an opportunity for early release based on demonstration of maturity and rehabilitation violates the Eighth Amendment. The Court also has held that it is error to modify a juvenile sentence to allow for judicial review without also holding a resentencing hearing.

The Court certified conflict with the Fourth District's decision in Pedroza v. State, 244 So. 3d 1128 (Fla. 4th DCA 2018), which had previously certified conflict with two Fifth District decisions.

Mann v. State, 5D18-245 (Aug. 31, 2018)

The trial court erred in proceeding to trial without conducting a competency hearing and entering an order on competency after defense counsel filed a motion to determine competency. The court, on remand, if possible, can enter a nunc pro tunc order determining competency. If the court finds that the defendant was incompetent, or is unable to make a determination of the defendant's competency at the time of the trial, the conviction must be vacated and a new trial conducted after competency is restored.

Solomon v. State, 5D18-1228 (Aug. 31, 2018)

The Fifth District reversed the denial of a Rule 3.800(a) motion to correct sentence.

The defendant received life sentences for first-degree murder, robbery with a firearm and armed burglary. The sentence for the murder was consecutive to the others, which were concurrent with one another. The defendant also received a 25-year mandatory minimum sentence for the firearm as part of the robbery sentence.

The 25-year mandatory minimum was illegal because the indictment did not allege that the defendant discharged a firearm that caused death or great bodily harm during the offense. Additionally, the jury, as to the robbery count, found that the defendant carried the firearm but did not further make the finding that the defendant discharged the firearm that caused death or great bodily harm.

The defendant also challenged the failure of the court to impose the 10-year mandatory minimum provision of section 775.087(2) for the use of a firearm during the commission of the murder and burglary of a dwelling. The Fifth District noted the oddity of a defendant challenging a trial court's failure to impose a mandatory minimum as part of a sentence, but concluded that such a claim was cognizable in a Rule 3.800(a) motion. Further, the two offenses were enumerated in section 775.087(2) and the mandatory minimums should have been imposed.

Finally, all three offenses were committed during a single criminal episode, there was only one victim, and the jury did not find that the defendant discharged a firearm on any of the counts. As a result, the mandatory minimums on all three counts had to run concurrently.

Snead v. State, 5D18-1247 (Aug. 31, 2018)

The Fifth District reversed the summary denial of a Rule 3.850 motion for further proceedings.

The defendant was convicted of felony battery as a lesser included offense of aggravated battery. He argued that trial counsel was ineffective for failing to object to instructions on felony battery as a lesser included offense because it was not charged in the information. The trial court found that the elements of aggravated battery included the elements of felony battery.

While aggravated battery was charged, it was charged only as battery with a deadly weapon, not battery with great bodily harm. While felony battery could be a proper lesser included offense of aggravated battery when it is charged as being with great bodily harm, the same does not hold true as to aggravated battery with a deadly weapon.