Case Law Update
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Eleventh Circuit Court of Appeals

Ovalles v. United States, 17-10172 (Oct. 9, 2018)

On October 4, 2018, the Eleventh Circuit held that the residual clause of section 924(c)(3)(B), the Armed Career Criminals Act, was not unconstitutionally vague. The en banc Court further remanded the appeal to the three-judge panel for further proceedings. The three-judge panel now decided the remaining issues in the case.

First, the Court held that the federal crime of carjacking by intimidation was a crime of violence under section 924(c)(3)(A)'s elements clause, as it required both intent to cause death or serious bodily harm and the use of force and violence or intimidation. It is therefore categorically a crime of violence.

The Court next reached the same conclusion as to attempted carjacking. "We can conceive of no plausible means by which a defendant could commit attempted carjacking absent a threatened or attempted use of force against a person." "Even assuming that the substantial step [required for an attempt] itself falls short of actual or threatened violence, we also conclude that because a completed carjacking qualifies as a crime of violence, an attempt to commit that violent offense constitutes a crime of violence too."

Second District Court of Appeal

Black v. State, 2D15-4556 (Oct. 10, 2018)

A trial court, at sentencing, may delegate to the Department of Corrections "the task of calculating the amount of prison credit that is due" as a result of time previously served on the case in state prison – as in this case, where the defendant was in state prison after his conviction and prior to an appeal granting a new trial. The trial court, however, may not delegate to the Department of Corrections the calculation of time served in county jail prior to the first trial. The sentencing judge must make that calculation.

Gorzynski v. State, 2D16- 4793 (Oct. 10, 2018)

Any error at sentencing in admitting into evidence "booking reports associated with two prior convictions" was harmless "as the reports were admissible as part of the presentencing investigation report."

Stauderman v. State, 2D17-2982 (Oct. 12, 2018)

The Second District affirmed a 10-year habitual felony offender sentence on resentencing "notwithstanding the court's failure to designate Stauderman as an HFO at the prior sentencing hearing."

Stauderman was originally sentenced to 66 months in prison followed by drug offender probation. At a probation violation hearing, he was then sentenced to 10 years in prison. The trial court did not orally pronounce habitual offender sentencing, and, pursuant to a motion for postconviction relief, the trial court vacated the habitual offender designation that appeared in the written sentencing order, because the oral pronouncement prevails over a written order when there is a discrepancy between them.

Stauderman further argued that the failure to designate him as an HFO at the VOP hearing precluded such sentencing upon violating probation. The trial court disagreed and then reimposed the same 10-year sentence, this time with the habitual offender designation. Stauderman appealed and the Second District affirmed. Once the trial court granted Stauderman's motion for postconviction relief, the court "was free to correct the illegal sentence on resentencing by imposing 'any sentence consistent with the sentencing laws in effect on the date of the offense, even if it result[ed] in a harsher sentence.' . . . That included designating Stauderman as an HFO notwithstanding its failure to do so at the prior hearing."

Third District Court of Appeal

Aguila v. State, 3D16-1975 (Oct. 10, 2018)

Aguila appealed convictions for sexual battery on a child between the ages of 12 and 18. The Third District affirmed and found that the trial court did not abuse its discretion by admitting evidence of "a collateral child molestation committed by the defendant while in familial authority."

The trial court determined that the collateral crime and the charged offense had sufficient similarities based on the following factors: "(1) the ages of A.C. [charged offense] and J.R. [collateral offense] when the alleged sexual assaults commenced; (2) the manner in which the alleged sexual assaults occurred; (3) A.C.'s and J.R.'s attributes when the sexual assaults commenced; (4) that the collateral crimes evidence and the charged offenses occurred while the defendant was in familial authority; and (5) that both A.C.'s and J.R.'s mothers relied on the defendant financially."

In agreeing with the trial court, the Third District noted the following: J.R. was 12 and A.C. 13 when the sexual assaults commenced; both children lacked self-confidence at that age; their fathers were not present in their lives due to incarceration; neither had a good relationship with her mother and both mothers had drug abuse histories; both mothers were financially dependent on the defendant; and the "defendant penetrated the vaginas of both victims with his penis but pulled out his penis prior to ejaculation."

Additionally, the trial court placed limitations on the scope of admissibility at trial, the trial court gave the jury a cautionary instruction as to the consideration of this evidence prior to its introduction, and the collateral crimes evidence did not become a feature of the trial.

Mathieu v. State, 3D17-423 (Oct. 10, 2018)

The Third District affirmed convictions for second-degree murder with a firearm and accessory after the fact, and addressed evidentiary issues raised on appeal.

One of the State's witnesses, Deshommes, positively identified the defendant, in a photo array, as the shooter, about three years before the trial. This was reiterated in a pretrial sworn statement, and in a second photo array shortly after. Three years later, in a deposition, one month prior to trial, Deshommes was substantially consistent with the earlier statements although he "had a more tangled recollection of some of the events." He still acknowledged circling the defendant's photo in the array.

At trial, Deshommes provided the basic identification testimony, including his prior identification of the defendant as the shooter. There was vacillation during the testimony, however, and it rendered the testimony "confusing and may have reduced his credibility." Some portions of the trial testimony were inconsistent with the prior

sworn statement and pretrial deposition. At one point during the trial testimony, Deshommes "said he didn't feel the person in the photo was the person he previously identified."

The defense "moved to strike Deshommes' testimony in its entirety, contending that the State called Deshommes just to impeach him with his own prior out-of-court testimony." "The trial judge concluded that the State was surprised by the harmful answers in parts of Deshommes' trial testimony," and "ruled that the State did not call Deshommes 'exclusively for – or even in large part to impeach him,' and that the actual impeachment of Deshommes was of de minimis substantive value."

A party may not call a witness "primarily for the purpose of getting an admissible statement before the jury as impeachment." The Florida Supreme Court's recent opinion of Bradley v. State, 214 So. 3d 648, 655-56 (Fla. 2017), sets forth a multi-factor test to determine "whether a party has called a witness for the primary purpose of introducing impeachment." The factors are: "(1) whether the witness's testimony affirmatively harmed the calling party; and whether the impeachment of the witness was of de minimis substantive value. . . . Where a witness gives relevant testimony probative of facts in dispute in addition to the impeachment, we have found no error." The Third District concluded that the trial court properly applied the Bradley test.

M.F. v. State, 3D17-2306 (Oct. 10, 2018)

The trial court commenced a Richardson hearing to address an alleged discovery violation. The court did not make a finding as to procedural prejudice, however. The failure to conduct a complete inquiry or make all of the necessary findings, however, was rendered moot, as the trial court ascertained and noted at a subsequent sidebar conference, that the document in question had been provided in discovery and there was no discovery violation.

C.A. v. State, 3D18-267 (Oct. 10, 2018)

Without setting forth the facts of the case, the Third District rejected C.A.'s argument that the evidence did not establish robbery by sudden snatching, but only petit theft. The Third District cited an earlier decision for the "holding that a robbery by sudden snatching 'does not require that the offender use or threaten to use any force or violence in order to commit the crime of robbery by sudden snatching."

Fourth District Court of Appeal

Martinez v. State, 4D17-2321 (Oct. 10, 2018)

Martinez was 17 years old at the time of the offenses for which he was convicted – second-degree murder with a firearm, attempted second-degree murder with a firearm and shooting into an occupied vehicle. He was originally sentenced to life without parole on the murder charge and 30 years in prison with a 25-year mandatory minimum for the other offense. After Miller v. Alabama, 567 U.S. 460 (2012), he was resentenced under the 2014 juvenile sentencing statutes to concurrent terms of 50 and 30 years, with 25-year mandatory minimum sentences under the 10-20-Life statute. On appeal from the resentencing, he argued that Miller prohibited the imposition of the statutory minimum mandatory sentences. The Fourth District disagreed. "[N]on-life minimum mandatories imposed on juvenile offenders are not unconstitutional under *Graham* or *Miller*."

Prior decisions discussed by the Court "establish that a sentence with a non-life minimum mandatory imposed against a juvenile offender facing a potential life sentence does not violation *Graham* or *Miller* so long as the juvenile was afforded an individualized sentencing hearing pursuant to section 921.1401 and is later afforded periodic judicial review of his or her sentence as provided in section 921.1402. Simply put, there is nothing about the 10-20-Life statute's minimum mandatory scheme that divests the court of the authority to consider whether a life sentence is appropriate for a juvenile offender. While it does prevent courts from fashioning sentences less than the applicable minimum mandatory, nothing in *Miller* or *Landrum* require a sentencing court to have absolute discretion in fashioning an unrestricted term of years sentence for a juvenile offender subject to a life sentence. Rather, the law merely requires the sentencing court to consider the offender's individual circumstances when determining 'whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.' S. 921.1401(2), Fla. Stat. (2016)."

Lundy v. State, 4D18-2008 (Oct. 10, 2018)

When a Rule 3.801 motion seeking correction of jail credit is facially insufficient, the trial court should strike the motion and grant the defendant leave to amend within 60 days.

Gray v. State, Francois v. State, Duarte v. State, Barr v. State, 4D18-2373, 4D18-2374, 4D18-2375, 4D18-2376 (Oct. 10, 2018)

These habeas corpus petitioners challenged pretrial detention without bond. Each was charged with a felony punishable by life. At the first appearance, the judge "found probable cause as to their charges and refused to set bond without first determining whether the probable cause affidavit or other materials established that proof of guilt was evidence or the presumption great." The petitioners challenged the trial court's refusal to make those findings at the first appearance.

In Ysaza v. State, 222 So. 3d 3 (Fla. 4th DCA 2017), the Court previously held "that at a first appearance the presiding judge is required to make a finding as to whether the probable cause affidavit or other materials presented to the court establish that proof of guilt is evident or the presumption great as a basis for denying pretrial release without bond. We explained that if the first appearance court finds that this standard has been met and declines to set bond, the defendant can later move to set bond and request a full *Arthur* hearing, where the defendant has a right to present evidence and to ask the court to exercise its discretion to set bond. . . . However, to hold the defendant without bond pending an *Arthur* hearing, the first appearance judge is 'required to find that the probable cause affidavit (or other materials before the court) establishe[s] that proof of guilt is evident or the presumption great.'"

The State conceded that the trial court erred by not following the procedures established in Ysaza. However, as in Ysaza, the Fourth District reviewed the affidavits and agreed with the State that they established proof of guilt was evident or the presumption great, and the trial court's error was harmless. The Fourth District did stress the need for the first appearance judge to "make this determination in the first instance and not defer this responsibility to the assigned judge or to our court for de novo review."

Fifth District Court of Appeal

Purdy v. State, 5D16-370 (Oct. 12, 2018)

This case was before the Fifth District on remand from the Florida Supreme Court, which had held that when a juvenile offender is entitled to a sentence review hearing, the trial court was not 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 rehabilitation.

In addition to affirming the sentence imposed by the trial court for first-degree murder, the Fifth District affirmed the trial court's "determination that it did not have the authority or discretion to modify Appellant's previously imposed 112.7 month-sentences for his armed robbery and armed carjacking convictions that were run concurrently with each other but consecutively to Appellant's sentence for first-degree murder."

The trial court had also specified that the defendant was not entitled to gain time on the sentence for first-degree murder. That, however, was a matter as to which the trial court lacked authority to regulate; regulation of gain time "resides exclusively with the Department of Corrections, not the trial court."

Edwards v. State, 5D17-1320 (Oct. 12, 2018)

The Fifth District reversed a conviction for leaving the scene of a crash involving personal injury "because the State's evidence was insufficient to establish that a crash caused the injury alleged in the information." The opinion does not set forth the facts of the case or the allegations in the information, but cites two cases, one for the "holding that section 316.027's operative phrase '"any vehicle involved in a crash" means that vehicle must collide with another vehicle, person, or object' and one for the holding 'that crash that occurred when the victim, who was trying to climb in window of car, fell and collided with pavement, did not constitute crash under leaving scene of crash involving death statute.'"