Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Gibbs, 17-12474 (Mar. 6, 2019)

Upon entering a conditional plea of guilty to being a felon in possession of a firearm, Gibbs appealed the district court's denial of his motion to suppress. The Eleventh Circuit affirmed and found that the encounter with the police "was part of a lawful traffic stop, and the seizure of the firearm from his pocket was likewise lawful."

A detective in an unmarked vehicle in Miami, on a two-lane street, observed a black Audi sedan pull into the oncoming traffic of the eastbound lane and come to a stop; the Audi was obstructing traffic. The driver exited and the detective, after making a U-turn, parked behind it and called for backup. Another detective responded and parked in front of the Audi. Both officers were in plain clothes, wearing tactical vests with "police" written on the front; they activated the lights on their cars as they pulled up.

When they exited, the Audi's engine was still running and its headlights were on, but no one was inside. The driver, Jones, was standing outside, between the Audi and another vehicle parked on the gravel shoulder area next to the road. Gibbs was standing next to the driver, next to the Audi. Gibbs had not been a passenger; he approached Jones after Jones stopped the Audi. As the detectives approached Gibbs and Jones, the narrow space between the two vehicles was insufficient to have enabled Gibbs or Jones to leave without going over one of the vehicles.

The detectives did not know who had been driving and neither was free to leave until that was determined and a citation was issued. As the detectives approached, Gibbs put his hands over his head. One detective had previously noticed "Gibbs looking around to the left and right" and thought he was preparing to flee. Gibbs volunteered, before any questioning, that he had a gun.

Upon being asked if he had a permit, Gibbs said that he did not and that the gun was in his back pocket. Gibbs was then handcuffed and the gun was retrieved.

Two witnesses, relatives of Gibbs, stated that an officer approached Gibbs with his gun drawn and that both officers yelled "get down" as they approached. The detectives had denied drawing their weapons when they exited their vehicles. The district court credited the testimony that the guns were drawn and the commands were issued, but also credited testimony from a detective that Gibbs raised his hands spontaneously and said that he had the gun. The district court further emphasized the late hour, the number of people in the vicinity, and the high-crime nature of the area as sufficient to enable the officers to draw their weapons for their own safety.

The Eleventh Circuit first concluded that Jones and Gibbs were detained under the Fourth Amendment as the detectives approached and prior to Gibbs' statement about the gun. Rather than viewing this as a Terry stop, as did the district court, the Eleventh Circuit thought it was more in the nature of a lawful traffic stop. In a traffic stop, the officer could pull the car over and direct the driver and passengers to exit. The first detective took immediate steps to issue a citation upon seeing the obstruction of traffic. Viewing it as such, the traffic stop was justified and supported by probable cause.

The brief detention of Gibbs was also justified. Gibbs placed himself next to Jones, and within seconds of the detectives approaching, made his statement about the gun. The detectives needed to determine should be cited for the traffic violation and "it was not unreasonable for [the detectives] to briefly detain Gibbs in order to maintain control of the situation, cite the vehicle, and ensure the detectives' safety."

United States v. Padgett, 16-16144 (Mar. 6, 2019)

Padgett "filed an untitled document in the district court stating her intent to file a collateral attack" as to her conviction, alleging that the government breached the terms of the plea agreement. The Eleventh Circuit granted the government's motion to dismiss the appeal for lack of jurisdiction, as the notice of appeal did not comply with Rule 3 of the Federal Rules of Appellate Procedure.

Padgett filed a "Memorandum in Support of Collateral Attack," asking the court to "take notice of the numerous complaints she has filed with the clerk regarding her court appointed counsel." The district court clerk docketed the pleading as a Notice of Appeal.

While the Court views pro se pleadings liberally, this document could not be construed as a notice of appeal. It reflected an intent to pursue a collateral attack not an appeal. Padgett also appeared to have been aware of her Post-Conviction

Consultation Certification, signed the same day as the date on the filing in question, "in which she affirmed, 'I have decided not to file an appeal.'" The manner in which the Clerk of the district court docketed the pleading was not dispositive.

One judge dissented.

United States v. Gandy, 17-15035 (March 6, 2019)

The Court addressed the issue of whether Gandy's "prior conviction for battery of a jail detainee, Fla. Stat. ss. 784.03, 784.082, qualified as a 'crime of violence' under the Sentencing Guidelines."

Although Florida's battery crime can entail both "touching and striking" and "intentionally causing bodily harm," because the record made it clear that Gandy's conviction was necessarily based on "intentionally causing bodily harm," the Court concluded that it did qualify as a crime of violence. Gandy had pled to "bodily harm" battery.

"Battery by 'intentionally causing bodily harm' categorically constitutes a crime of violence," as the two elements of the offense include causing bodily harm to another and doing so intentionally. The Court further relied on statements in the arrest report, including Gandy's description of the offense. While Gandy contested the ability of the court to consider those statements, claiming they were merely "legal conclusions," the Court disagreed, observing that "Florida law requires a factual basis for a plea to ensure 'that the facts of the case fit the offense with which the defendant is charged."

Furthermore, while Gandy argued that the charging document would have to be amended to narrow the elements of the conviction in order for the federal court to treat the battery as a crime of violence, the Eleventh Circuit disagreed. "What matters under the modified categorical approach is not the offense charged, but what elements the government proved or the defendant admitted committing." While a charging document is relevant, "it is not the only document."

One judge dissented. The dissent asserted that the "panel incorrectly applies the modified categorical approach, creating a circuit split in the process. As a result, the panel mistakenly concludes that Gandy's prior conviction for violating s. 784.03 was 'necessarily' for bodily-harm battery."

First District Court of Appeal

Simmons v. State, 1D17-4095 (Mar. 7, 2019)

Simmons was 17 at the time of the first-degree murder he committed. After Miller v. Alabama, he received a new sentencing hearing and was sentenced to life with the opportunity for early release with a review hearing under the 2014 juvenile sentencing statutes.

On appeal, he challenged the trial court's findings as to several of the statutory factors, disagreeing with "the trial court's assessment of the required factors." There was no objection, and this could not be entertained on appeal as it did not constitute a claim of fundamental error. "The statute requires only that the trial court 'consider' these factors before it can impose a life sentence."

The Court also reiterated its holding from prior cases that it is for the trial court, not a jury, to "determine whether a life sentence is appropriate under the statutory factors in section 921.1401."

In this case, the jury was instructed on both premeditated murder and felony murder, convicting Simmons of first-degree murder. The "jury expressly found on the verdict form Simmons killed the victim during the commission of a burglary," and there were no instructions on the law of principals. Once the jury made that requisite finding, the appropriateness of a life sentence remained for the judge to make.

Bryant v. State, 1D17-4674 (Mar. 7, 2019)

After the denial of a suppression motion and plea of no contest, Bryant appealed, raising several claims based on the suppression motion. The First District affirmed its denial.

First, the Court agreed with Bryant that he had a reasonable expectation of privacy in his backyard and that the trial court erred in concluding that deputies legally entered it. It was difficult to see into the backyard from the public road and a deputy confirmed that he could not see the residence or into the yard without climbing atop an elevated ditch by the driveway.

The deputy "responded to a tip about suspicious chemical smells coming from a residence." He and another deputy then entered and saw Bryant exiting a shed;

Bryant said that he caused the odor by cutting glass. Bryant subsequently signed a consent-to-search form after being informed of his right not to have a search made of the property without a warrant.

There were no exigent circumstances for a warrantless search or entry into the backyard. However, the consent to search sufficed to render the search legal. The consent was found to be voluntary. Bryant was almost 30; he was free to tell the officers to leave; he was not arrested and was not in handcuffs; there was no show of force, as no weapons were drawn and no threats were made. Only two deputies were with Bryant, while two others were with other individuals in the backyard. The officers were present in the yard for only 10 minutes prior to the signing of the consent. The consent, under those facts, was not tainted by prior illegal police action.

McCrae v. State, 1D18-1210 (Mar. 7, 2019)

McCrae, 17 at the time of committing a second-degree murder, received a 30-year sentence prior to 2005. In the aftermath of United States and Florida Supreme Court decisions regarding juvenile life sentences, he sought a new sentencing hearing. The trial court denied relief and the First District affirmed, because the 30-year sentence was for a homicide and "there was no life sentence – de facto or otherwise. Indeed, McCrae will still be in his forties when released."

McCray v. State, 1D18-1477 (Mar. 7, 2019)

The First District affirmed the denial of a Rule 3.850 motion, as to which the trial court conducted an evidentiary hearing. McCray argued that counsel was ineffective "in connection with her open plea and the sentence ultimately imposed." Counsel "allegedly led her to believe that if she rejected the State's plea offers, she would receive a sentence which did not include any incarceration." The State's plea offers included 364 days of jail time plus probation.

At the evidentiary hearing,, it was "established that Appellant was informed and was well aware of the twenty-year maximum sentence she faced." Defense counsel "testified that Appellant rejected both offers from the State based on the jail time required" and "denied advising Appellant to reject the offers. Counsel testified that he informed Appellant that if she did not want to accept the plea offers, she could enter an open plea but that the sentence could be 'anything within the legal range, including the maximum.'"

Jenkins v. State, 1D18-1843 (Mar. 7, 2019)

"'The fact that the original terms of probation were ordered to run concurrently does not mandate that the sentences imposed after violation of probation also run concurrently.'"

Petty v. State, 1D18-3686 (Mar. 4, 2019)

A sentence imposed upon a finding of indirect criminal contempt was reversed for resentencing due to a failure to comply with Rule 3.840(g), which requires the court to inform the defendant of the accusation and judgment, to inquire as to any reason why sentence should not be pronounced, and to provide an opportunity to present evidence of mitigating circumstances. Noncompliance with that rule is fundamental error. The actual facts of what transpired in the trial court are not set forth in the opinion.

Second District Court of Appeal

Peterson v. State, 2D17-1324 (Mar. 6, 2019)

Peterson appealed convictions and sentences for several drug offenses. All of the convictions were reversed because "there was no valid basis for law enforcement to conduct a traffic stop" and there was no reasonable suspicion that Peterson had committed or was about to commit a crime.

A jail clerk testified that her job required her to listed to phone calls between inmates and their visitors "if warranted." The clerk also handled money deposited in inmate accounts. She noticed that Peterson was "depositing money into several different inmate accounts," and thus decided to listen to a call between Peterson and her boyfriend, who was an inmate. She overheard the boyfriend discuss a matter involving himself and another woman, and the boyfriend told Peterson that the unidentified act had to be "done at night." When asked what act was being described, the jail clerk stated that they were going to try to bring contraband into the jail. As to another visitation call, the jail clerk heard the boyfriend ask whether Peterson brought something, or brought "gold," with him, to which Peterson responded affirmatively. More comments were made about something having to be done at night and not on the weekend.

The jail clerk opined that Peterson appeared to be under the influence of something because her head was laying down, her eyes were closed, and she stopped talking. Her eyes were rolled to the back of her head.

The jail clerk observed Peterson leave and get into her vehicle, and saw her slumped over the steering when, sitting in the car for 30-35 minutes before leaving. The clerk relayed this information to the Sheriff's office. Deputies set up surveillance, waiting to see if Peterson was going to throw something over the gate. That did not occur, and the deputies followed Peterson when she drove away. Peterson was eventually stopped "because she failed to maintain a single lane of traffic on two occasions." The deputy who stopped her did not observe any oncoming traffic or any impact on traffic based on the manner in which Peterson was driving.

While "a driver's failure to maintain a single lane, coupled with a suspicion of impairment, unfitness, or vehicle defects, can give rise to probable cause for purposes of a traffic stop, there was no such testimony that such circumstances existed in this case." The Court further noted other relevant testimony – the street was one-way, with bike lanes on each side; no bicycles were observed; no pedestrians were observed being affected; and the officer did not assume that Peterson was under impairment at the time. When the Court's opinion refers to the need for probable cause, as opposed to reasonable suspicion, it cites the decision of Hurd v. State, 958 So. 2d 600 (Fla. 4th DCA 2007), in which the Court held that the stopping of a motorist for a traffic violation requires the existence of probable cause to believe that a traffic violation occurred.

Absent probable cause, there was no basis for believing that Peterson violated section 316.089(1). Nor was there reasonable suspicion as to any criminal offense. The tip provided by the jail clerk "consisted of nothing more than vague portions of a conversation that the clerk construed as suspicious coupled with the clerk's assumption that Peterson was under the influence of drugs based on her physical demeanor."

State v. Pettis, 2D17-2973 (Mar. 6, 2019)

The State appealed an order suppressing contraband found in Pettis's car. The trial court found that law enforcement officers needed a warrant, as the car was within the curtilage of the house where it was parked.

Although standing was not raised in the trial court, the State could raise it for the first time on appeal. And, as that issue was not developed in the trial court, the suppression order was reversed and remanded for a hearing to determine Pettis's standing. There was "scant testimony or other evidence explaining Mr. Pettis's connection to the house. This omission detracts from our determination of the extent of protection afforded Mr. Pettis under the Fourth Amendment."

A surveillance CD supported the trial court's "finding that Mr. Pettis parked his car within the curtilage of his mother's house." "Here the officer is located outside of a constitutionally protected area and is looking inside that area. If the officer observes contraband in this situation, it only furnishes him probable cause to seize the item. He must either obtain a warrant or have some exception to the warrant requirement before he may enter the protected area and seize the contraband."

However, if Pettis lacked standing, he will not succeed in suppressing the contraband, as his vehicle would not be "afforded the Fourth Amendment protections extended to a home's curtilage."

Byun v. State, 2D17-3838 (Mar. 6, 2019)

The Court affirmed the denial of a motion to dismiss based on double jeopardy grounds. Byun pled no contest to unlawfully traveling to meet a minor in violation of s. 847.0134(4)(a) and attempted lewd battery.

Although the two charges arouse out of the same conduct in a single criminal episode, each offense required proof of an element that the other did not. Section 847.0135(4)(a) requires proof that the defendant "(1) knowingly traveled . . . (2) for the purpose of engaging in any illegal act described in chapters . . . 800 . . ., or to otherwise engage in other sexual conduct (3) with a child or with a person that the defendant believed to be a child (4) after using a computer or other device capable of electronic communication (5) to seduce, solicit, or entice the child . . . to engage in the illegal act or other unlawful sexual conduct or to attempt to do so."

A violation of section 800.04(4)(a)(1), for an attempt, requires proof "(1) that the defendant intended to engage in sexual activity with a person under twelve years of age or older but less than sixteen years of age and (2) that the defendant committed an overt act toward doing so."

The issue presented by the parties in this case was whether the attempt charge also required a third element: "that the defendant failed to successfully complete the

crime." The Court found that it did not need to resolve that question because the parties ignored the significance "of a much clearer difference between the elements of the two offenses." "Unlawful travel requires proof that the child victim is less than 18 years old." "Attempted lewd battery, however, requires proof that the intended child victim is at least twelve years' old but less than sixteen years' old." Thus, attempted lewd battery has an element that unlawful travel does not.

Third District Court of Appeal

Jones v. State, 3D17-1941 (Mar. 6, 2019)

The Third District found that comments of the trial court at issue, as to which there was no objection, and which allegedly shifted the burden of proof, did not constitute fundamental error. The comments, however, are not quoted or paraphrased in the Court's opinion.

Echeverarria v. State, 3D18-570 (Mar. 6, 2019)

The defendant, in 2000, received concurrent sentences of 35 years for charges of second-degree murder and armed robbery, both of which were committed while he was 15 years of age. The denial of a motion for post-conviction relief challenging the length of those sentences based on Graham v. Florida and Miller v. Alabama, was affirmed on the basis of Pedroza v. State, 244 So. 3d 1128 (Fla. 4th DCA 2018). Pedroza had rejected the claim that a juvenile sentence of 40 years violated Graham or Miller.

Pedroza relied, in turn, on Hart v. State, 2018 WL 2049668 (Fla. 4th DCA 2018), which certified conflict with decision of the Second and Fifth Districts. Echeverria further noted that review by the Florida Supreme Court was granted in Pedroza, SC18-964.

Loor v. State, 3D18-2636 (Mar. 6, 2019)

A pro se emergency habeas petition as to a trial court's pretrial detention order was dismissed, pursuant to Logan v. State, 846 So. 2d 472 (Fla. 2003), because Loor did not satisfy his burden under Logan of demonstrating that "'he or she is either not represented by counsel in the proceeding below, or that he or she is seeking through the petition to discharge counsel in that proceeding.'" Loor admitted he was currently represented by counsel in the trial court and was not seeking to discharge

counsel. He argued that he was not represented by counsel at the time he filed the habeas petition.

Fourth District Court of Appeal

Stokes v. State, 4D14-945 (Mar. 6, 2019) (on motion for rehearing)

The Court withdrew its prior opinions with respect to juvenile sentences. As to Stokes' life sentence for murder with parole after 25 years, the Court affirmed. As to "consecutive life sentences for the non-homicide offenses on Counts II and III, we reverse and remand for resentencing" under the 2014 juvenile sentencing statues, pursuant to Lawton v. State, 181 So. 3d 452 (Fla. 2015). And, a 30-year sentence for aggravated battery on a person over 65 years of age was affirmed based on Hart v. State, 246 So. 3d 417 (Fla. 4th DCA 2018) (en banc). [See Echevarria, above].

Grant v. State, 4D17-2167 (Mar. 6, 2019)

A conviction for felony battery was reversed based on "fundamental error by instructing the jury on the forcible-felony exception to the justifiable use of force."

Grant admitted to the battery at trial. Her sole affirmative defense was "that she was justified in using force to defend her son." As part of the instruction, the court "instructed the jury that Defendant's use of force was not justified if the jury found that Defendant's *son* was attempting to commit, committing, or escaping after the commission of burglary of a conveyance."

"Although there are no Florida cases analyzing the forcible-felony exception in the context of defense of another, cases analyzing the exception in the context of self-defense make clear that 'the plain language of section 776.041 indicates that it is applicable only under circumstances *where the person claiming self-defense* is engaged in another, independent "forcible felony" at the time.'" It is error to read the forcible felony instruction where the defendant is not charged with an independent forcible felony. "Stated differently, the focus is on whether the *accused* was engaged in a separate forcible felonious act. Whether the defense asserted is defense of another or self-defense does not change the plain language of the statute."

"Because Defendant was the person asserting defense of another, the instruction should have asked the jury to determine whether Defendant was attempting to commit or committing a separate felony. By instructing the jury that Defendant's use of force was not justified if it found that the son was attempting to

commit, committing, or escaping after the commission of a forcible felony, the instruction improperly shifted the focus from Defendant's behavior to the son's behavior without regard to Defendant's knowledge of the surrounding circumstances." . . . Aside from being a misstatement of the law, the erroneous instruction effectively negated Defendant's only defense and, therefore, vitiated the fairness of her trial."

Jackson v. State, 4D17-2220 (Mar. 6, 2019)

When a person is convicted of aggravated battery causing great bodily harm, it is permissible to reclassify the offense to a first-degree felony based on the use of a firearm. Such a reclassification is prohibited only when the conviction is for aggravated battery with a firearm. Under that circumstance, the firearm is already an element of the offense. When the aggravated battery is based on great bodily harm, the firearm is not an essential element of the aggravated battery, thus enabling the reclassification.

Johnson v. State, 4D17-3741 (Mar. 6, 2019)

A conviction for exploitation of an elderly person for a value of $10,000 or more but less than $50,000 was reversed based on the failure to prove value exceeded $10,000. The conviction was reduced to one based on value less than $10,000. The Court rejected Johnson's argument that the State failed to prove intent.

The victim was Johnson's 88-year-old neighbor who had been involuntarily hospitalized based on signs of dementia. Johnson had the victim sign a power of attorney while hospitalized and hen used it to withdraw more than $13,000 from the victim's bank accounts. The issue was what the defendant intended to do with the money. She claimed she was using it to pay the victim's bills and fix her house. The State maintained the funds were used for purposes not in the victim's best interests.

Approximately $2,600 was deposited into Johnson's personal account. The remainder was used to pay others for retail purchases. Johnson also added her six-year old daughter as the "death beneficiary of the victim's accounts." Evidence presented by Johnson included individuals who were paid with bank checks to clean the victim's home; evidence as to the payment of property taxes; payment of an attorney for the victim in subsequent guardianship proceedings; and payment to Johnson herself for compensation "for the time spent working on the home and/or to reimburse herself for expenses incurred on the victim's behalf."

As to the issue of intent, "although there was evidence corroborating Appellant's claim that much of the money taken from the victim's accounts was used for the benefit of the victim, there was also evidence establishing that Appellant deposited some of the money taken from the victim's accounts into her own bank account and named her daughter as the beneficiary of the victim's accounts. This evidence, when viewed in the light most favorable to the State, supports the alternative theory that Appellant intended to benefit herself and not preserve the victim's estate."

As to value, most of the money, $8,000, was used to pay the victim's real estate taxes, "clean up her home, and retain legal counsel to represent the victim in the guardianship proceeding." Subtracting that from the total reduced the value not used for the victim's benefit to less than $10,000.

Moreno v. State, 4D18-1100 (Mar. 6, 2019)

A sentence was affirmed but remanded for correction of the scoresheet due to a scoresheet error. Driving in violation of a driver's license restriction, a misdemeanor, "should not have been scored as an additional offense since Appellant completed his sentence for that offense before the violation of probation occurred." This added .2 points to the total. The affirmance was based on the finding that the .2 points would not have altered the sentence based upon a consideration of the court's comments during sentencing.

Johnson v. State, 4D18-2744 (Mar. 6, 2019)

When "a defendant mistakenly files a habeas corpus petition attempting to challenge a conviction or sentence, the filing should not be treated as a new, separate proceeding." Rather, it should either be dismissed or treated as a postconviction motion under Rule 3.850.

Rosado v. State, 4D18-2968 (Mar. 6, 2019)

Although the Court affirmed the summary denial of a rule 3.850 motion, it reversed the order prohibiting the further filing of pro se motions. The Court reviewed the postconviction proceedings at issue and concluded that the record did not show an abuse of the process by Rosado.

Hawkins v. State, 4D19-0007 (Mar. 6, 2019)

The Court granted a prohibition petition based upon a speedy trial violation. The trial court had denied discharge because it did not receive a copy of Hawkins' notice of expiration. Hawkins, however, complied with the rules by filing a copy with the clerk of the court and serving a copy on the State.

Although an administrative rule of the Seventeenth Circuit required counsel to simultaneously provide the judge with a copy of the notice of expiration, that was deemed as an additional requirement, above and beyond the speedy trial rule, and the administrative office of the court "may not force a defendant seeking discharge to jump through additional hoops other than those set forth by the rule."

Fifth District Court of Appeal

Greene v. State, 5D18-2484 (Mr. 8, 2019)

Greene appealed the denial of a motion to correct illegal sentence. The motion was denied in open court on June 28, 2018. The notice of appeal did not have a mailing stamp and had a certificate of service dated July 18, 2018. On July f19, 2018, the trial court withdrew its June 28th order and struck Greene's pro se filings as nullities because he was represented by counsel.

The trial court lacked jurisdiction to enter the July 19th order. Because Greene was incarcerated, his notice of appeal was deemed filed when sent to prison officials for mailing. Absent a stamp from prison authorities, the presumptive date is the date in the certificate of service. The notice of appeal therefore divested the trial court of jurisdiction as of the date in the certificate of service.

Batista-Irizarry v. State, 5D18-2911 (Mar. 8, 2019)

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

The first claim was that counsel failed to convey a favorable plea offer. The trial court denied this claim, attaching a pretrial transcript to show that the State did not make the offer in question. The attached transcript, however, did not support the trial court's conclusion. While it referred to what the prosecutor believed to be its last offer of five years, it did not refute the allegation that there had also been a three-year offer.

In the second claim, the defendant argued that counsel urged him to reject the five-year plea offer because the State had a weak case and that counsel assured him that the charged would be dismissed and that he should say nothing. The trial court concluded, wrongfully, that the defendant alleged that he was not informed of the plea. This claim was not based on the three-year plea offer alleged in the prior claim.

State v. Knowles, 5D18-3024 (Mar. 8, 2019)

The Court denied the State's certiorari petition, in which the State argued that the trial court erred in "precluding it from utilizing evidence at trial of other crimes, wrongs, or acts of child molestation committed by Respondent."

The Fifth District emphasized the high degree of discretion that a trial court has when making determinations of admissibility regarding the probative value and prejudice regarding collateral offense evidence. Certiorari is not a question of whether the appellate court agrees with the trial court. The petitioner has a very high burden to satisfy.

Sparber v. State, 5D18-3640 (Mar. 8, 2019)

A rule 3.800(a) motion was summarily denied and the Fifth District reversed for further proceedings as to one claim.

"'A defendant may not be sentenced to drug-offender probation unless he has been convicted of an enumerated offense under Chapter 893 or he has specifically agreed to such conditions as part of a plea agreement.'" Sparber was not charged under chapter 893, and it was "not clear whether the trial court had the authority to impose these special conditions as part of his probationary sentence."