Case Law Update
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Supreme Court of Florida

Smith v. State, SC18-42 (March 5, 2020)

The Supreme Court affirmed the denial of a Rule 3.851 motion.

Smith argued that trial counsel was ineffective for failing to seek the suppression of evidence obtained during a warrantless search of his cell phone. At the time of the trial, suppression would not have been granted, based on the then controlling decision in Smallwood v. State, 61 So. 3d 448 (Fla. 1st DCA 2011). Although the Florida Supreme Court subsequently quashed Smallwood, counsel could not be deemed ineffective for failing to anticipate changes in the law. Similarly, counsel was not ineffective for failing to file a motion for new trial under Rule 3.600(a) when it was known that the Florida Supreme Court had accepted jurisdiction to review Smallwood. The potential for existing case law to be overturned in a pending appeal in the Supreme Court is not a viable basis for a motion for new trial under Rule 3.600(a).

Counsel was not ineffective for failing to develop mitigation evidence for the penalty phase. The trial court had found that "'any arguable shortcomings of the penalty phase of Mr. Smith's trial arose mainly from [Smith's] strict instructions to counsel not to speak to his family members,' and that Smith's 'own lack of cooperation in preparing for the penalty phase undermines his present allegations of ineffective assistance of counsel.'" The Supreme Court rejected Smith's reliance on State v. Lewis, 838 So. 2d 1102 (Fla. 2002), for the proposition "that an attorney must conduct a thorough investigation and preparation of mitigation evidence before a defendant can knowingly and intelligently waive mitigation evidence." In Lewis, neither the defendant nor his family impeded counsel's efforts with respect to the development of mitigating evidence.

A claim based on Riley v. California, 573 U.S. 373 (2004), that a warrantless search of the defendant's cell phone mandated suppression, was not addressed; it was procedurally barred because it was not raised on direct appeal.

Anderson v. State, SC18-1059 (Mar. 5, 2020)

Anderson was charged with aggravated assault and the trial court denied his request for an instruction on the lesser-included offense of reckless driving. The First District found that there was no error in denying the request. The Supreme Court, addressing a conflict between the First and Fourth Districts, agreed with the First District.

An instruction on a permissive lesser-included offense must be given, on request, when the charging document includes allegations as to each element of the lesser offense and there is evidence at trial as to the lesser offense. The charging document in this case alleged that Anderson "did unlawfully and intentionally make an assault upon [Anderson's girlfriend] with a motor vehicle, a deadly weapon[,] without intent to kill. . . ." The Supreme Court concluded that this language did not allege that the defendant actually drove the vehicle; and reckless driving includes the element that the defendant was operating the vehicle. "Although a reader might infer from this language that Anderson was driving the vehicle, the information does not actually make that allegation. Instead, consistent with the elements of the aggravated assault charge, the information simply alleges that 'Anderson made an assault upon' the victim 'with a motor vehicle.'" This did not constitute an allegation of driving.

The Court found that it is possible to commit the greater offense, aggravated assault, with a motor vehicle, without actually driving the vehicle. "[O]ne could commit aggravated assault with a motor vehicle without driving it, by, for example, pushing an unmanned vehicle down a hill toward the victim, threatening to crush part of the victim's body with a vehicle door or trunk lid, or threatening to lock the victim in a trunk and roll the vehicle into a body of water."

As the information failed to expressly allege that the defendant was driving the vehicle, the information did not contain allegations as to every element of reckless driving, and the defendant was not entitled to an instruction on reckless driving as a permissive lesser-included offense.

First District Court of Appeal

Hill v. State, 1D18-1358 (Mar. 3, 2020)

Hill was originally sentenced, for the offense of attempted second-degree murder with a firearm, to a prison term of life, with a 25-year mandatory minimum

for the use of the firearm. Six days later, the trial court, believing that it had imposed an illegal sentence, corrected the mandatory minimum from 25 years to life. On appeal, the First District found that this was error.

The 25-year mandatory minimum provision was lawful, and therefore the trial court erred by changing it. Furthermore, because the life sentence exceeded the statutory maximum of 30 years for the attempted second-degree murder with a firearm (a first-degree felony), the life sentence had to be reduced to a maximum of 30 years, with a 25-year mandatory minimum.

Santiago v. State, 1D18-4298 (Mar. 2, 2020)

The First District affirmed the denial of a Rule 3.850 motion arising out of a conviction for first-degree murder.

Counsel was not ineffective for failing to call a witness. Counsel had testified at an evidentiary hearing that he was unaware of the witness. Nor was this a viable claim of newly discovered evidence. Santiago admitted having been present at the club where the shooting occurred and he knew that there were witnesses. He testified that he did not tell counsel about any potential witnesses because he thought it was counsel's job to investigate.

A claim of ineffective assistance for failing to impeach a witness was denied because the record showed that counsel had attempted to impeach the witness, but the trial court prohibited the testimony.

Second District Court of Appeal

Treadway v. State, 2D18-1850 (Mar. 6, 2020)

As the Second District did in an earlier case, it certified the following question to the Florida Supreme Court, as a question of great public importance:

> IS THE LOWEST PERMISSIBLE SENTENCE AS DEFINED BY AND APPLIED IN SECTION 921.0024(2), FLORIDA STATUTES (2017), AN INDIVIDUAL MINIMUM SENTENCE AND NOT A COLLECTIVE MINIMUM SENTENCE WHERE THERE ARE MULTIPLE CONVICTIONS SUBJECT TO SENTENCING ON A SINGLE SCORESHEET?

The Court also certified conflict with a decision of the Fifth District on the same issue.

Bryant v. State, 2D18-4980 (Mar. 6, 2020)

The failure of a written sentence to conform with an oral pronouncement is a scrivener's error, and was corrected on appeal, as the oral pronouncement controls over the written sentence.

Donofrio v. State, 2D19-1323 (Mar. 6, 2020)

The trial court erred in dismissing a postconviction motion due to an insufficient oath. "The motion contained a written declaration that complied with the requirements of section 92.525(2), Florida Statutes (2015). The written declaration was made under penalty of perjury, provided that Donofrio had read the motion, and certified that the facts contained therein were true and correct. The declaration was made at the end of the motion but above Donofrio's signature. The form and substance of the written declaration mirrored the written declaration contained in the form motion for jail credit contained in the Florida Rules of Criminal Procedure."

State v. Johns, 2D18-1844 (Mar. 4, 2020)

The trial court erred by granting a Rule 3.800(c) motion to reduce a sentence. "Rule 3.800(c) does not allow the modification or reduction of a sentence when 'the trial judge has imposed the minimum mandatory sentence or has not sentencing discretion.' Originally, the trial court sentenced Mr. Johns as an adult to a ten-year minimum prison term. As a result, rule 3.800(c) does not permit retroactive reclassification as a youthful offender to achieve a different result."

State v. J.C., 2D19-712 (Mar. 4, 2020)

The trial court erred by granting a motion to suppress evidence obtained during what J.C. argued was a search subsequent to an unlawful arrest.

J.C. was on probation. A deputy sheriff was the only witness at the suppression hearing. He observed J.C. and J.C.'s mother on a porch, with open alcohol containers and a marijuana blunt roach cigarette within inches of J.C. When

the deputy inquired what was going on, the mother stated that it was nothing; that it belonged to J.C.'s cousin, who was inside. The deputy never saw the cousin.

The deputy was going to arrest J.C. for the marijuana blunt, the alcohol, and for being outside his residence after curfew. The deputy had J.C. stand up, and before any physical contact, inquired if J.C. had anything else on him that the deputy should know about. J.C. responded that he had a couple of baggies, and J.C. reached into is pocket and pulled out some baggies with "green stuff" in them, which the deputy recognized as marijuana.

The trial court concluded that reasonable suspicion existed based on the curfew violation, but not on the basis of marijuana which was in front of J.C. The Second District first found, contrary to J.C.'s argument, that the incident involved a consensual encounter. The fact that J.C. was not free to leave did not alter that, as this was at most an investigatory stop, and the only directive from the deputy had been for J.C. to "stand up," which was only a "minor inconvenience." The deputy's inquiry as to whether J.C. had anything that the deputy should know about did not constitute an arrest.

Furthermore, reasonable suspicion existed on the basis of a suspected curfew violation. The mother's statement about an unseen cousin did not suffice to dispel that suspicion. Finally, J.C.'s act of emptying his pockets in response to the officer's question, but without any directive to do so, was a voluntary act on the part of J.C., and did not constitute a search.

Fourth District Court of Appeal

Ramsay v. State, 4D19-951 (Mar. 4, 2020)

In a prior appeal, the Fourth District remanded the case to the trial court to make a nunc pro tunc determination of the defendant's competency at the time of trial. Rather than do that, the trial court made a determination of the defendant's competency at the time of an expert's written report, which was dated more than two years prior to the trial. The trial court treated this new appeal from that order of the lower court as a motion to enforce the Fourth District's prior mandate, and once again sent the case back to the trial court for a nunc pro tunc determination of competency at the time of the trial.

Mondesir v. State, 4D19-1131 (Mar. 4, 2020)

The Criminal Punishment Code scoresheet erroneously included points for prior juvenile dispositions that were more than five years old.

Delorme v. State, 4D19-1510 (Mar. 4, 2020)

The trial court erred by including, on the sentencing scoresheet, under the category of "additional offenses," 17 charges of grand theft. At the time of the probation violation for which Delorme was being sentenced, the sentences on those grand theft convictions had already been completed. They were not pending for sentencing at the time of the sentencing for the primary offense.

Fifth District Court of Appeal

Richards v. State, 5D17-2704 (Mar. 6, 2020) (on remand from the Florida Supreme Court)

The trial court erred in assessing investigative costs where the State had not requested such costs and there was no evidence from the investigating agency.

Roberts v. State, 5D17-3638 (Mar. 6, 2020)

Because Roberts received a stand-your-ground immunity hearing prior to the 2017 effective date of the statutory amendment regarding the burden of proof at immunity hearings, he was not entitled to a new immunity hearing.

Shoulders v. State, 5D19-2916 (Mar. 6, 2020)

In a case where the defendant had a coperpetrator, the jury erred in finding that the defendant discharged a firearm during the commission of the offense. There was evidence that Shoulders possessed a firearm, not that he personally discharged it.