Case Law Update
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Prepared by
Richard L. Polin

Eleventh Circuit Court of Appeals

United States v. Gomez, 19-10609 (Apr. 14, 2020)

Gomez was sentenced to consecutive prison terms of 46 and 21 months for illegally reentering the United States and violation terms of his supervised release. The Eleventh Circuit affirmed the sentences on appeal and rejected Gomez's argument that the sentences were unreasonable because of a failure to properly consider and weigh the sentencing factors under 18 U.S.C. s. 3553(a).

The Eleventh Circuit reviewed the reasonableness of the sentences pursuant to the abuse-of-discretion standard and rejected Gomez's argument that the appellate review should be de novo. De novo review was applicable under controlling decisions only when the issue on appeal was strictly a legal issue. The instant case involved an "indisputably applicable Guideline that endowed the district court to act within its discretion."

Gomez argued in part that the district court did not take into consideration a state court sentence of eight years for sexual battery. "The district judge was not required to conclude that the state sentence for sexual battery would discourage Gomez from committing another crime, particularly when ample evidence suggested that court punishments were of minimal deterrence for Gomez."

"In addition to deterrence, the district judge focused on ensuring that her sentence promoted respect for the law . . . and adequately protected the public from the defendant. . . ." "The district judge was certainly justified in emphasizing those factors. Gomez's PSR details his history of violence." Additionally, the sentence was well below the statutory maximum that could have been imposed.

In Re: Courtney Wild, 19-13843 (Apr. 14, 2020)

Wild filed a mandamus petition alleging that federal prosecutors violated her rights under the Crime Victims' Rights Act of 2004, when they "secretly negotiated and entered into a non-prosecution agreement with [Jeffrey] Epstein." The Eleventh Circuit denied the petition because rights under the CVRA "do not attach until

criminal proceedings have been initiated against a defendant, either by complaint, information, or indictment." As no charges were filed, "the CVRA was never triggered." The petition alleged violations of the right of the victim to confer with the government's lawyers and be treated fairly by them.

First District Court of Appeal

L.T. v. State and T.J.T., 19-3032 (Apr. 17, 2020)

A juvenile crime victim filed a prohibition petition under Marsy's law, which the Court treated as a certiorari petition, claiming that the trial court failed to provide her with required notice and conducted proceedings in her absence in a juvenile defendant's criminal case.

L.T.'s mother was not notified of the first appearance and detention hearing, at which T.J.T. was released and placed on continued home detention, of which the mother was notified. The mother then filed a notice of appearance in the proceedings, which was followed by an attorney filing an appearance by counsel for L.T., and counsel moved to vacate the prior court orders due to the lack of prior notice to L.T. of the proceedings. Further motions were filed by L.T.'s counsel alleging lack of consultation and/or notice with respect to the scheduling of depositions. Counsel for the juvenile defendant, T.J.T., also filed a motion to strike the pleadings on behalf of L.T., as L.T. was not a party to the criminal case. At another hearing, counsel for L.T. objected to the release of a Child Protection Team interview video and records without giving L.T. an opportunity to be heard. The trial court eventually struck the notice of appearance on behalf of the victim, finding that Marsy's law did not provide for victims becoming parties to the criminal case.

The First District first rejected the remedy of prohibition because L.T.'s counsel, at oral argument, acknowledged that L.T. was not seeking to prohibit the court from proceeding with the still pending sentencing hearing in the case. L.T. only wanted the proceedings to continue "in a manner which comports with her perceived right of participation."

The Court then considered the case as one seeking certiorari review of the various orders which L.T. was challenging based on her appearance in the proceedings and the trial court's actions which were undertaken without notice to the victim. "Establishing a victim's legally cognizable interest in a criminal proceeding does not also automatically entitle a victim to party of record status." L.T., apart from the initial proceedings in the criminal case, did receive subsequent

notice of proceedings. "Marsy's Law provides that the victim's rights to notice of first appearance are 'satisfied by a reasonable attempt by the appropriate agency to notify the victim and convey the victim's views to the court.'" The arresting agency notified the mother of the arrest, and, although the victim was not notified of the first appearance and detention hearing, the State Attorney's Office and DJJ were present and, consistent with L.T.'s position, requested secure detention. Other motions in the trial court that were at issue were now deemed moot, because the juvenile defendant had accepted a plea in the case.

The appellate court further observed that the trial court had permitted substantial participation by counsel for the victim, including the granting of requests for access to file materials and the imposition of more stringent conditions on detention. As the victim did not have party status, the trial court's actions in not granting further rights did not depart from clearly established principles of law, and there was therefore no basis for granting certiorari relief. Accepting L.T.'s arguments would require the Court to "interpret Marsy's Law as fundamentally altering the criminal proceedings by implication. Such an application is a vast departure from the traditional common law approach to criminal justice and without explicit text directing such a departure, we decline to do so. Here, the trial court carefully conducted the proceedings to achieve a balance between L.T.'s right to meaningful participation in the criminal proceeding and the juvenile defendant's right to a fair trial."

Newcombe v. State, 1D16-4769 (Apr. 15, 2020)

In Lee v. State, 258 So. 3d 1297 (Fla. 2013), the Supreme Court held dual convictions for unlawful use of a computer service and traveling to meet a minor violated double jeopardy. In this case, on remand from the Florida Supreme Court, the First District held that Newcombe was not entitled to relief through a Rule 3.850 motion. Whereas Lee was decided in the aftermath of a jury verdict "founded upon a charging document limited to one count of solicitation and one count of traveling after solicitation," the instant case involved a plea agreement. The basis for the plea agreement in the instant case was broader, as it included not only the charging document, but "also information about potential solicitations that could have been charged, such as those mentioned in the probable cause affidavit, but were not."

One judge concurred in result only and urged the Florida Supreme Court to recede from the rationale expressed in Lee.

Heatherington v. State, 1D18-3747 (Apr. 15, 2020)

In an appeal from a conviction for first-degree premeditated murder, the Court held that the trial court did not err in admitting collateral offense evidence. A few months before the victim was shot in the head, the defendant was alleged to have been observed by the victim's child pointing a handgun at the victim's head in a threatening manner.

The Appellant argued that discrepancies in the child's account precluded the trial court from finding the existence of the collateral offense by clear and convincing evidence. The child had described the weapon as being "like a pistol," but "like a submachine gun, [] he held it in one hand." The child's lack of certainty of the date of the prior incident was deemed understandable. The key fact was that the child was certain that the incident did occur.

The Court also rejected the Appellant's argument that the probative value of the evidence was outweighed by prejudice. Prior difficulties between a defendant and victim are relevant to the issue of premeditation. The child's testimony was also relevant to intent. Whether the probative value outweighs prejudice entails a consideration of multiple factors. Here, the testimony was needed because there was no forensic evidence linking the defendant to the shooting. The evidence also showed intent and premeditation, as opposed to an accidental shooting. The testimony was not cumulative; it was accompanied by a limiting instruction to the jury; and it did not become a feature of the trial.

Beall v. State, 1D19-57 (Apr. 15, 2020)

In a direct appeal of convictions and sentences, the First District rejected the argument that the defendant was denied his right to effective assistance of counsel when the trial court denied counsel's motion to withdraw as counsel.

Prior to trial, an extremely hostile relationship existed between the defendant and counsel. Beall was granted the right to represent himself, while prior counsel was relegated to standby status. At the outset of trial, the defendant agreed to accept representation from counsel again, and prior to jury selection the prior hostile relationship quickly emerged during jury selection, resulting in an extensive inquiry by the trial court and a motion to withdraw by counsel, which was denied.

During jury selection and opening argument, more complaints and disruptions from the defendant ensued. The trial court repeatedly directed the defendant to sit

down and the defendant ignored orders to do so. The court admonished the defendant that he could not create a conflict to get rid of counsel and the judge further threatened to remove the defendant from the courtroom if the outbursts continued. The defendant then announced that he had called one of the jurors the prior evening. The jurors were polled, and it was learned that one juror received a call but heard only the briefest of sounds before the call was disconnected.

The appellate court found that the trial court "took painstaking steps to address Appellant's every complaint, despite Appellant's obstinate behavior." The trial court had denied the motion to withdraw, finding that the defendant was playing games. The appellate court rejected "Appellant's legal premise that defense counsel is inevitably ineffective when a rift forms in an attorney-client relationship-in this case, caused by the defendant's own behavior-forcing the attorney to cry foul and request permission to withdraw." "[W]here a trial court finds that a defendant's behavior was knowingly obstructive, that finding should weigh heavily against any claim that the attorney-client relationship has diminished to such an extent that counsel is no longer effective. Here, the trial court was consistent in its warnings that Appellant could not force a continuance by threatening his attorney . . . and provoke defense counsel to move to withdraw. Moreover, there was no evidence of a total breakdown in communication between Appellant and his attorney, despite Appellant's concerted efforts to derail the trial."

Oliver v. State, 1D19-1206 (Apr. 5, 2020)

The Court found that the evidence was sufficient as to the offense of possession of a firearm by a convicted felon. There was no dispute that Oliver was a convicted felon or that he possessed a firearm; he argued that he possessed it as a matter of necessity. The First District concluded that the facts were in dispute as to whether the defense of necessity was established.

There was conflicting evidence as to whether Turner had spat at or threatened Oliver with a firearm in a confrontation that occurred shortly before an officer observed Oliver with the firearm. If the jury accepted these denials by Turner, "Oliver could not meet the first element of the necessity defense," which requires that a defendant reasonably believe "that his action was necessary to avoid an imminent threat of death or serious bodily injury to himself or others." Turner also testified that Oliver did not arm himself until Turner had walked away from their confrontation, which would, if the jury believed Turner, negate another element of the necessity defense, which requires proof that "there existed no other adequate means to avoid the threatened harm except the criminal conduct."

Second District Court of Appeal

Valera-Rodriguez v. State, 2D18-1794 (Apr. 17, 2020)

The defendant was found guilty by the jury of conspiracy to traffic in cocaine, with an express finding that the amount of cocaine was between 400 grams and 150 kilograms. The defendant was sentenced accordingly, with the 15 year mandatory minimum sentence based on that quantity. However, the information, when it alleged the conspiracy offense, did not include any allegation as to the amount of the cocaine. This was a fundamental defect in the charging document. The appellate court addressed the issue of what the proper remedy was, and it rejected the remedy of just striking the mandatory minimum sentence.

The allegations in the information referenced the correct statute for the conspiracy offense, s. 893.135(5), and that subsection, in turn, referenced 893.135(1), which further referenced the sentencing provisions of 893.135(1)(b). The effect of those multiple statutory references was to have put the defendant on notice that he was charged with conspiracy to traffic and was thus subject to the potential mandatory minimum sentence for at least the lowest quantity for the conspiracy offense, which would have been 28 grams, and which, in turn, carried a three-year mandatory minimum sentence. The appellate court therefore reversed and remanded with directions to impose the lesser mandatory minimum of three years.

State v. Desange, 2D18-5026 (Apr. 17, 2020)

After a jury found the defendant guilty of vehicular homicide and reckless driving, the court granted a motion for judgment of acquittal notwithstanding the verdict. The State appealed and the Second District reversed.

Both offenses hinge on the existence of reckless conduct. The Second District emphasized the following facts: The posted speedy limit was 40 miles per hour, with many traffic lights and heavy traffic. The defendant's car was described by witnesses as flying, zooming, driving as if it was the Indiana Speedway, driving in and out of traffic, and driving recklessly. A car driven by a friend of the defendant was engaged in the same conduct, and both cars were using turn lanes and bicycle lanes to pass traffic. The defendant's car "attempted to squeeze in between two occupied lanes of traffic and hit another car," and the defendant did not stop. Five seconds prior to the collision, the defendant was doing 72 miles per hour. He then

rapidly decelerated and made a sudden right turn from the left lane in front of the car driven by his friend. The car driven by his friend struck the defendant's car; the friend's car struck a telephone pole and burst into flames, with the friend dying from the injuries sustained. The fact that the defendant decelerated to 24 miles per hour immediately prior to the right turn from the left lane did not alter the Court's conclusion.

State v. Robinson, 2D17-468 (Apr. 15, 2020)

Robinson was sentenced to life in prison, with parole eligibility after 25 years, for a first-degree murder committed while he was under the age of 18. Pursuant to the then-existing Florida Supreme Court decision of Atwell v. State, Robinson obtained post-conviction relief with respect to that sentence. The State appealed, and the Florida Supreme Court then receded from its decision in Atwell. As the sentence of life with parole eligibility was no longer deemed an illegal sentence, the Second District reversed the order granting post-conviction relief.

State v. James, 2D18-2552 (Apr. 15, 2020)

The trial court dismissed two charges of failing to report as a sexual offender under section 943.0435(14)(b), concluding that James did not qualify as a sexual offender "because he has not yet been released from the sanction imposed in his underlying case; therefore, Mr. James is not required to report and register." The Second District agreed with the trial court and affirmed the order of dismissal.

James had previously been sentenced to 15 years in prison and had been released from prison. He had also been fined $10,000, and that fine had not yet been released or discharged. The statute for failing to report applies, inter alia, when one has been released from the "sanction imposed." Sanction is defined to include a fine. The fine was neither a lien nor a court cost. It was imposed under section 775.083, Florida Statutes (2001).

The Second District rejected the State's argument that the statutory language meant a "release of either the period of incarceration or the fine" triggers the duty to report. The statutory language did not use the word "or," however. The State further argued that the Second District's construction of the statute would be contrary to the legislative intent. The Court rejected that argument based on the principle that courts presume that the legislature says in the statute what it meant.

T.C. v. State, 2D19-965 (Apr. 15, 2020)

After T.C. filed a motion to correct the juvenile disposition, the trial court failed to rule on the motion within 30 days, but subsequently entered an order and amended order granting the requested relief. Once the 30 days expired, the trial court lost jurisdiction and those orders were nullities. The Second District vacated those orders and directed the trial court, on remand, to reenter the orders granting the relief.

Jefferson v. State, 2D19-3012 (Apr. 15, 2020)

Jefferson filed an amended motion under Rule 3.850 adding additional claims. The trial court subsequently denied the Rule 3.850 motion, addressing the claims from the original motion and not referencing the claims from the amended motion. One and ½ years later, Jefferson filed a motion noting this for the trial court. The trial court dismissed that motion as untimely and successive. The Second District reversed. The date stamp from the prison on the amended motion showed that that motion had been filed prior to the trial court's order denying the 3.850 motion, and the claims should have been ruled on when the court ruled on the original motion.

Third District Court of Appeal

D.G. v. State, 3D19-441 (Apr. 15, 2020)

The Third District affirmed an order revoking probation based on D.G.'s failure to participate in and complete an anger management program and substance abuse counseling. On the day of the revocation hearing, the defense objected to the State calling an unlisted witness, a case management supervisor. The prosecutor stated that the case had been reassigned to her and that she noticed the witness was missing from the previously filed witness list. She had also learned the previous day that the prior case manager had departed the program, and the new case manager was going to testify in her place. The court reset the hearing for five days later, without any objection or comment by defense counsel.

At the start of the revocation hearing five days later, defense counsel stated that she had just conducted a partial hallway interview of the new case manager and was not prepared to go ahead with the revocation hearing. The prosecutor had waited until the day after the prior hearing, at 5:02 p.m., to provide the updated witness list, and defense counsel had been unable to reach the new case supervisor during the

intervening days. The witness had not been at work when counsel called, and counsel had other court hearings to attend to.

On appeal, the Third District concluded that the trial court conducted an adequate inquiry into the belated disclosure of the new case manager as a witness. The reasons for the late disclosure, noted above, were accepted by the trial court and reflected that the late disclosure was inadvertent. When the prosecutor, at the first hearing, suggested that the revocation hearing not proceed at that time, the prosecutor was viewed as having conceded that the discovery violation was substantial. As to the prejudice to the defense in its preparation for the hearing, the trial court handled that through the five-day continuance. The appellate court rejected the argument on appeal that five days was insufficient. Defense counsel did not object when the trial court announced the five-day continuance, and the new case manager was present at that first hearing, but defense counsel did not make any arrangements with the case manager for an interview at that time.

The appellate court further found that there was sufficient non-hearsay evidence to support the probation violation, showing that it was willful and deliberate. The current case manager had spoken to D.G. and informed him that if his behavior did not improve, he would be terminated from the program. D.G. indicated that he understood and the manager further testified that the behavior did not improve and that "D.G. was terminated from the counseling sessions because of his continuing 'aggressive, disrespectful, and defiant behavior.'"

Fourth District Court of Appeal

Ayers v. State, 4D18-769 (Apr. 15, 2020)

In a first-degree murder case, the trial court made a competency determination, but failed to enter a written order. The trial court was directed to enter the order on remand.

The defendant had previously been found to be incompetent in three non-homicide cases. The trial court appointed one expert to reevaluate the defendant in those three cases, and a second expert to evaluate the defendant in the new homicide case. After the experts completed there reports and found the defendant competent, the trial court made an express determination of competency as to the three non-homicide cases.

As to the homicide case, the court agreed with the prosecutor's statement that since the defendant had never been deemed incompetent in the homicide case, the court did not have to make a finding in the homicide case. The court then went on to expressly find the defendant competent in the three non-homicide cases and that on the basis of the experts reports, "there is no reason for this Court to venture into the issue of [the defendant's] not being anything but competent when it comes to [the homicide case], considering there is no evidence to the contrary." (bracketed materials were included in the Fourth District's opinion). Written orders of competency were entered in the three non-homicides cases, but not in the homicide case.

On the basis of the foregoing, the Fourth District concluded that the trial court made an adequate determination of competency as to the homicide case. Once the examination was ordered in the homicide case, the court was required to enter an order regarding competency after the hearing, however.

Sherrod v. State, 4D18-2955 (Apr. 15, 2020)

The trial court written order revoked the defendant's probation based on the commission of new drug offenses on two separate dates. On appeal, the Fourth District reversed as to one of those dates, because no evidence was adduced as to that date. The trial court further erred in revoking probation based on the failure to pay certain costs without having made an express determination of the defendant's ability to pay. Resentencing was not required, however, as it was clear from the record that the trial court would have imposed the same sentence based on the remaining violation. The Fourth District inferred that the trial court was not influenced in its sentencing decision by the alleged offense on the second date because the trial court did not hear any evidence regarding that alleged offense.

One judge dissented in part and would have ordered a resentencing.

Brown v. State, 4D18-3031 (Apr. 15, 2020)

The Fourth District reversed a conviction for second-degree murder because the trial court erred in admitting hearsay testimony describing the shooter when that witness did not testify at trial.

Brown and two other individuals, including Ridgeway, were observed in a surveillance video running in an alleyway by a convenience store after a shooting. One witness identified Ridgeway as the shooter, but also provided a description of

the clothing of the shooter that corresponded to Brown, not Ridgeway. That witness did not testify at trial, and a detective, at trial, was permitted to testify as to both parts of this identification testimony.

The State argued on appeal that defense counsel's cross-examination of Ridgeway at trial opened the door to the testimony describing the clothing of the shooter from the surveillance video. The Fourth District disagreed. Ridgeway was asked "whether he was aware that somebody had identified him as running from the alley at the time of the shooting. Ridgeway responded that he had not heard those allegations, and the defense did not continue this line of questioning." "The mere fact that testimony may be characterized as incomplete or misleading does not *automatically* trigger the admission of otherwise inadmissible evidence under the opening the door principle. [] Rather, the State must show a legitimate need to correct a false impression before resorting to inadmissible evidence, otherwise the principle becomes a mere pretext for the illegitimate use of inadmissible evidence. . . . Here, defense counsel's brief exchange with Ridgeway did not open the door wide enough for the State to introduce Witness X's hearsay statements describing the shooter."

Jennings v. State, 4D18-3695 (Apr. 15, 2020)

The Fourth District reversed a conviction for possession of cocaine with intent to sell or deliver. First, the trial court erred by permitting an officer to testify that he had found an informant upon whom he relied to have been reliable in the past. "This was improper vouching of the informant's credibility based on information not presented to the jury. The improper vouching was especially harmful because it came from a police officer. Further, the harm was enhanced when the informant whose credibility was bolstered was the only person within close proximity to the seller in the transaction."

Additionally, during voir dire, the court instructed the jury that the rules "will only allow the most reliable type of evidence to be considered by the jurors." This was error, especially in a case where the only anticipated evidence was going to be coming from the State. The comment by the court "was capable of misleading jurors." "Reliability" could be construed by jurors as meaning "accuracy," and the judge could have been viewed as commenting on the credibility of the State's evidence.

Almodovar v. State, 4D19-620 (Apr. 15, 2020)

On the State's motion for rehearing, the Court withdrew its prior opinion and issued the new opinion. The Court held that "when a defendant files a motion for discharge, the [Speedy Trial] Rule requires a court to conduct an inquiry under subsection 3.191(j), even if the 15-day recapture period of subsection 3.191(p)(3) has expired."

Rule 3.191(j) requires the court to grant a motion for discharge for failing to abide the time periods of Rule 3.191 unless, inter alia, "the failure to hold a trial is attributable to the accused, a codefendant in the same trial, or their counsel; [or] the accused was unavailable for trial under subdivision (k)."

The case was remanded to the trial court to determine whether the defendant was available for trial.

Puy v. State, 4D19-724 (Apr. 15, 2020)

The defendant was charged under section 836.10, Florida Statutes (2018), which applies to "any person who makes, posts, or transmits a threat in a writing or other record, to conduct a mass shooting or an act of terrorism, in any manner that would allow another person to view the threat. . . ."

The defendant posted a photo of himself on social media, with the caption: "On my way! School shooter." The defense filed a sworn motion to dismiss, arguing that the posting was vague and subject to interpretation. The Court found that the motion was properly denied, as the posting by the defendant constituted prima facie evidence sufficient to support a conviction; the defendant's arguments about other possible interpretations of the posting were appropriate arguments for the jury at trial.

Eugene v. State, 4D19-992, 4D19-1281 (Apr. 15. 2020)

Eugene appealed convictions for vehicular homicide and other offenses; the State cross-appealed the dismissal of the charge of fleeing or attempting to elude an officer causing death or serious bodily injury based on the single homicide rule. The Fourth District affirmed on both the appeal and cross-appeal and wrote an opinion only to explain its decision on the State's cross-appeal.

The Court noted a conflict among district courts of appeal as to whether the single homicide rule was applicable; the question was whether the fleeing or eluding offense should be subject to that rule based on the argument that it is not a form of homicide. The Court emphasized that in this case, it was significant that there was only a single death, and the fleeing offense was alleged to have included death or serious bodily injury.

The Court also noted that the issue of whether the single homicide rule applies to dual convictions for vehicular homicide and fleeing or attempting to elude an officer causing serious bodily injury or death is currently pending before the Florida Supreme Court, as a certified question of great public importance, in the case of State v. Maisonet-Maldonado, SC19-1947. That case is currently set for oral argument on September 10, 2020.

State v. Cheeks, 4D19-1408 (Apr. 15, 2020)

The State appealed from an order of dismissal under the speedy trial rule. The calculations pertinent to the speedy trial period involved an argument as to the correct date of arrest. The trial court found that the defendant was functionally arrested on the day of the incident; the formal arrest was a year later. The Fourth District disagreed with the trial court's conclusion regarding a functional arrest: "Because the police officers did not have an intent or a purpose to arrest Cheeks, did not communicate to him that he was arrested, and the evidence did not show that Cheeks thought he was arrested," an arrest, for purposes of the speedy trial rule, did not occur on the date of the incident.

In the aftermath of the incident, an alleged sexual battery, Cheeks was apprehended and placed in handcuffs in a police vehicle. Marijuana was found in his pocket. He answered questions about what had previously occurred. He stated that he had been chased, hit by a vehicle, and tackled by a stranger, and that he had dropped his cell phone and keys. The police searched for those and other items, and subsequently towed his car to the police station. Cheeks was also taken to the police station, where he was placed in a holding cell, while the police took his belt, money and shoes. He was interviewed at the station four hours later. He was read his Miranda warnings. At the outset, the officers told him that they would talk and afterwards "we'll get ya outta here." After consensual questioning and consent for a DNA swab, Cheeks asked what would happen. An officer stated that the investigation was continuing. Cheeks remained in the interrogation room for another two hours after the interview. The police had located his cell phone, which they said they would keep pending further investigation. The car, belt and money were

returned to him and he was permitted to leave. An officer testified that he did not believe that probable cause existed on the day of the incident; that a DNA test was needed.

The Fourth District noted the four-element test to determine if a person has been arrested prior to a formal arrest: "1) whether the purpose or intent of the authority is to effect an arrest; 2) seizure of the person; 3) a communication by the arresting officer of an intention to effect an arrest; and 4) whether the person believes the arresting officer is there to arrest and detain him." Based on the above facts and the four-element test, an informal arrest had not occurred and the speedy trial period had not commenced running until the formal arrest one year later.

Fifth District Court of Appeal

Spear v. State, 5D19-1747 (Apr. 17, 2020)

The Court addressed the issue of "whether a trial court, on its own motion, may, at any time after the judgment and sentence becomes final, correct a ministerial error in sentencing documents that overreport the amount of jail credit and prison credit awarded to a defendant." The Court held that the trial court did have the authority to do so, and noted that its decision conflicted with decisions from other district courts of appeal.

As part of the analysis of the issue, the Court addressed the question of whether the resulting reduction of credit results in a double jeopardy violation and concluded that it did not. This was based upon the observation that the entry of the amount of credit is typically done post-sentencing, by a clerk, and is not part of the 'judicial decision-making" in the case. Nor did it defeat the defendant's legitimate expectations in the finality of the sentence. The only legitimate expectation that the defendant had was that the proper amount of credit would be communicated by the court to the correctional facility.

In addition to certifying conflict with decisions of other district courts of appeal, the Court certified the following question of great public importance:

> ONCE A JUDGMENT AND SENTENCE IS FINAL, DOES A TRIAL COURT HAVE THE INHERENT AUTHORITY AT ANY TIME TO SUA SPONTE CORRECT SENTENCING DOCUMENTS THAT OVERREPORT THE AMOUNT OF JAIL TIME

SERVED BY A DEFENDANT PRIOR TO SENTENCING OR THE AMOUNT OF JAIL TIME AND PRISON TIME SERVED BY A DEFENDANT PRIOR TO RESENTENCING?

Stratton v. State, 5D19-2127 (Apr. 17, 2020)

The defendant's probation was revoked for changing his residence without the consent of his probation officer. The Fifth District reversed, finding that the evidence was insufficient.

The probation officer, who had never met the defendant, made an unannounced visit to the defendant's listed residence. The defendant's father responded at said that the defendant had not been there in three weeks. The officer did not inquire where the defendant was. The defendant was living in a trailer on his father's property. The father testified at the revocation hearing that the prior probation officer had visited the defendant at the trailer and had approved of it.

Murphy v. State, 5D20-124 (Apr. 17, 2020)

The defendant's first Rule 3.850 motion was based on a claim that a witness had recanted. After that was denied, an appeal commenced. While that was pending appeal, a second Rule 3.850 motion, based on a similar claim of witness recantation, was filed. Due to the similar and overlapping natures of the claim, the trial court lacked jurisdiction to entertain the second motion while the appeal was pending from the first motion. If the issues had been unrelated, the trial court could have proceeded with the second motion.

Derossett v. State, 5D19-802 (Apr. 15, 2020)

The defendant, charged with three counts of attempted first-degree murder of a law enforcement officer, asserted Stand Your Ground immunity at a pretrial hearing. After the first such hearing, the motion for immunity was denied and the Fifth District, in prohibition proceedings, remanded the case to the trial court to resolve two specific issues: 1) "whether the State proved, by clear and convincing evidence, that at the time Derossett used deadly force, he knew or reasonably should have known that the persons against whom he was using such force were law enforcement officers;" and 2) "whether the State had established by clear and convincing evidence that Derossett was using his dwelling or residence to further a criminal activity at the time that he used deadly force."

On remand, the parties stipulated that the trial court could resolve the issues on the basis of the prior evidentiary hearing. The trial court then found that the State had not sustained its burden as to the first question, but that the State did prove that Derossett was using his dwelling to further criminal activity at the time he used deadly force. A second prohibition petition was then filed and the Fifth District granted the petition and directed that Derossett be discharged.

In its review capacity, the Fifth District accepted the trial court's conclusion that the defendant knew that his niece, whom officers were attempting to arrest, had been working as a prostitute and using the residence for acts of prostitution. The relevant statutory provision negates immunity if the accused was "furthering criminal activity." While the Fifth District accepted that the niece's acts of prostitution constituted criminal activity, knowledge that the niece was using her room in the residence for prostitution did not rise to the level of using the defendant using the residence "to further a criminal activity."

The testimony at the hearing was that law enforcement did not consider the defendant to be involved in the niece's prostitution activity. There was no evidence of his involvement in any arrangements for the niece's customers; nor was there evidence of the defendant providing the niece with protection; nor was there evidence of any financial benefit to the defendant.