

Case Law Update
June 22, 2020
Prepared by
Richard L. Polin

Supreme Court of the United States

Andrus v. Texas, 18-9674 (June 15, 2020)

In a death penalty case, trial counsel failed to develop and present extensive mitigating evidence. The Texas state trial court found that counsel was ineffective. The state appellate court disagreed and found that Andrus failed to satisfy his burden under Strickland v. Washington. The appellate court's opinion was otherwise unelaborated.

Based on the lack of elaboration of the state appellate court ruling, the United States Supreme Court could not determine whether the state court's decision was based on the first prong of Strickland – i.e., that counsel was not deficient; the second prong – i.e., that Andrus did not establish prejudice as a result of the deficiency; or both prongs. As the Supreme Court found that deficiency clearly existed based on the extensive amount of evidence not developed by defense counsel, the Court granted the petition for writ of certiorari and remanded the case to the state appellate court to address the issue of prejudice under Strickland.

Eleventh Circuit Court of Appeals

United States v. Jackson, et al., 19-11505 (June 16, 2020)

The Fair Sentencing Act of 2010 amended the penalties for crack-cocaine offenses, but the Act applied only to defendants sentenced on or after the effective date of the Act. The First Step Act of 2018 granted district courts discretion to reduce sentences for crack-cocaine offenders in accordance with the Fair Sentencing Act of 2010.

The 2018 Act defines “covered offenses.” The statutory language created a grammatical issue. Covered offense is defined as “a violation of a Federal criminal statute, *the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act. . . ,* that was committed before August 3, 2010.” The question was whether the modifying clause applied to the phrase “a violation of a Federal Criminal statute,” or, to the shorter phrase, “Federal criminal statute.” The Court concluded

that the better construction was that it applied to the entire phrase “a violation of a Federal criminal statute.” The alternative construction would have opened the door to sentencing reductions for offenses other than crack-cocaine offenses.

[United States v. Oliver](#), 17-15565 (June 18, 2020)

The Court granted the government’s motion for rehearing with respect to an issue under the Armed Career Criminal Act. The Court now held that the Georgia predicate offense of making terrorist threats was a divisible offense, and that a threat to commit any crime of violence under Georgia law “always includes an element requiring threatened violent force against another.” As a result, the Georgia conviction qualified as a violent felony under the ACCA.

Second District Court of Appeal

[Catalano v. State](#), 2D16-3307 (June 19, 2020)

On remand from the Supreme Court of Florida, the Second District held that in light of the Supreme Court’s decision in [Love v. State](#), Catalano was not entitled to a new Stand Your Ground immunity hearing; his prior hearing was held prior to the effective date of the 2017 statutory amendment, and he was not entitled to the application of the amended burden of proof.

[Downs v. State](#), 2D19-2323 (June 17, 2020)

Downs received consecutive habitual felony offender sentences. He challenged them in a Rule 3.800(a) motion to correct illegal sentence.

The Second District, addressing a timeliness issue, first noted that although such claims could be raised in a timely 3.850 motion, which time would have expired in the late 1990’s, they could also be raised in a Rule 3.800(a) motion, which does not have a time limitation period.

When such a claim is raised in a Rule 3.800(a) motion, it must allege “not only that the claim is determinable from the face of the record, but must identify with particularity the record documents upon which [the movant] relies in seeking a determination of the claim.” Documents upon which a defendant relies may not include hearsay, such as police reports. The documents which Downs appended to his motion – the amended informations – were insufficient under this standard, as they were nothing more “than the State’s allegations of any crimes with which the

defendant is charged.” And, the judgments and sentences “tell us nothing of the facts of the underlying crimes.”

The Second District’s affirmation of the denial of the motion was without prejudice to the filing of a sufficient motion in accordance with the criteria set forth in this opinion; and any such motion would not be deemed a successive motion.

Third District Court of Appeal

Mitchell v. State, 3D19-695 (June 17, 2020)

The trial court did not abuse its discretion in permitting the State to introduce collateral offense evidence in a burglary prosecution.

The defendant was observed in a scrapyard, throwing pieces of scrap metal over the fence for later retrieval. In the prior incident, the defendant was observed “removing scrap metal in the same manner from the exact same location. . . .” The State introduced the prior offense as proof of modus operandi. Mitchell argued the two incidents were not strikingly similar and were not unique enough.

Barber v. State, 3D19-1081 (June 17, 2020)

In an appeal from a conviction for second-degree murder, the Third District held that a motion to disqualify the trial court judge was legally insufficient. The “defense asserted that, prior to the commencement of the proceedings, the judge encountered a witness waiting outside of chambers and inquired whether she was the second-chair attorney assigned to try the case.” A competency hearing was pending at that time, and, the motion alleged that the judge had also made a statement of the court’s intent to summon a venire to the courtroom at a time certain, to commence voir dire. The defendant’s motion alleged that these combined facts were evidence that the judge had predetermined the defendant’s competency.

The defense’s motion was inadequate, as it was never reduced to writing. Additionally, “the purportedly offending remarks, as encapsulated within the record, were by their very terms conditional, thus, evinced neither preconceived notion nor bias.”

[A.H. v. State](#), 3D19-2139 (June 17, 2020)

A.H. pled guilty to a lesser included offense of criminal mischief, and the court ordered him to wear an electronic monitoring device for 30 days. This requirement was not an abuse of discretion. At the time of disposition, A.H. had two other pending cases and had been the subject of two pick-up orders.

Fourth District Court of Appeal

[Morales v. State](#), 4D18-2003 (June 17, 2020)

At the sentencing hearing for a trafficking offense, the court imposed, inter alia, a fine of \$50,000. The subsequent written order included a fine for \$500,000. On appeal, this was corrected to \$50,000, as the oral pronouncement prevails over the written order.

[Johnstone v. State](#), 4D19-212 (June 17, 2020)

The Fourth District affirmed a revocation of probation based upon the defendant's acts of stalking neighbors over a three-year period. The Court noted the difficulty of determining whether "an individual's behavior is merely boorish or juvenile as opposed to illegal stalking. . . ."

The defendant notified his neighbor of his conviction for a sex offense, and the neighbor indicated that he and his wife would not have anything to do with him and that the defendant should stay on his side. The subsequent campaign of harassment included: moving the defendant's fence from its former location to the edge of the property; placing weeds, rocks, chunks of concrete and tree limbs in the neighbors' driveway; placing barbed wire on the border fence; painting the side of the fence facing the neighbors' property with obscenities; burning fires on his own lawn and then driving a lawnmower so that it blew ashes onto the neighbors' property when they had visitors outdoors; bathing outdoors in a largely undressed state while the neighbors had their young granddaughter visiting; pacing in front of the neighbors' property in the middle of the night; staring at the female neighbor and her granddaughter while they were in their pool.

Stalking involves a course of conduct that serves "no legitimate purpose." It may include acts which, taken individually, are "perfectly legal." The evidence in this case also included an admission by the defendant to an officer that he engaged in this conduct to "mess" with his male neighbor. The pattern of conduct was

“malicious” and “without just cause or excuse.” The evidence was also sufficient to prove substantial emotional distress on the part of the victims. This finding was based on an objective, “reasonable person” standard.

One judge dissented.

O’Neal v. State, 4D19-472 (June 17, 2020)

The defendant was resentenced for a first-degree murder and robbery that were committed while he was a juvenile. The Fourth District reversed for another resentencing. The defendant was sentenced for the murder to life without the possibility of parole. The verdict specified guilty “as charged in the indictment.”

Although the indictment alleged only premeditated murder, the verdict did not inquire whether the defendant actually killed the victim or if the victim was killed by someone else, whether both individuals were principals in the commission of the robbery. The verdict for robbery specified that the defendant discharged a firearm and inflicted death or great bodily harm.

The defendant’s sentence was imposed under s. 775.082(1)(b)1., which requires a finding that the defendant actually killed, intended to kill or attempted to kill. Although the absence of that finding is subject to review for harmless error, in this case, the defendant disputed that he was the shooter, and the victim’s cousin, an eyewitness, had given contradictory statements as to the physical description of the shooter.

As to the robbery conviction, the 10-20-Life statute carried only a 10-year mandatory minimum sentence. The record did not conclusively show that the trial court would have imposed the same 40-year sentence for the robbery absent its belief that a minimum sentence of 40 years was required for the murder. The reversal of the sentence for murder therefore required resentencing as to the robbery as well.

Fifth District Court of Appeal

State v. Brown, 5D19-153 (June 19, 2020)

The Fifth District reversed a downward departure sentencing, concluding that there was insufficient evidence to support the departure reason that the victim was a willing participant in the sexual activity.

The defendant, age 52, made repeated sexual advances on the 17-year old victim, after accompanying the victim and her family on a vacation. “The victim responded by telling the Appellee that she was uncomfortable with the propositions and that she did not want to have sex with him. Despite these rejections, the Appellee continued to pursue a sexual relationship with the victim by giving her alcohol and telling her that he was in love with her. The Appellee’s behavior escalated to the point that he threatened to falsely accuse the victim’s brother of several crimes in order to secure the victim’s continued involvement in the sexual relationship. Finally, the victim’s written statements showed that she only continued to have sex with the Appellee because she believed that the Appellee would harm her or her family if she left him. This evidence clearly shows that even though the victim did not always resist having sex with the Appellee, she was not a willing participant in their sexual relationship” The evidence also showed that the defendant groomed the victim, and such evidence is inconsistent with the existence of a willing participant.

L.A.T. v. State, 5D19-1357 (June 19, 2020)

The evidence was insufficient to support an adjudication of delinquency for discharging a firearm in public.

The offense at issue, under s. 790.15(1), Florida Statutes, required proof that the road on which the incident occurred was both paved and public, or that the firearm was discharged over occupied buildings. The evidence in the case indicated that the road was on private property, and was used only by employees at that property to access the company facilities. And, the evidence adduced indicated that L.A.T. “fired away from the occupied buildings and into an empty wooded area.”

Although this issue was not preserved for appellate review, it constituted fundamental error, as the State failed to prove “that a crime actually occurred.”