

Case Law Update  
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Eleventh Circuit Court of Appeals

[United States v. Hall](#), 18-14145 (July 21, 2020)

Hall, a registered sex offender, pled guilty to one count of receipt of child pornography, resulting from his possession of more than 100 images. His advisory sentence was 180 months in prison, but the district court imposed a sentence of 480 months. Hall challenged the sentence, alleging improper reliance on hearsay, the lack of required notice for the departure sentence, and that the sentence was substantively unreasonable. The Eleventh Circuit affirmed the sentence.

The hearsay related to information from a prior case file and depositions from an earlier case. The Eleventh Circuit found that the hearsay at issue had sufficient indicia of reliability. The depositions of two victims from the early 1990's as to what Hall had done "were consistent each time they were interviewed and were consistent with each other's statements. Their statements were also corroborated by the evidence law enforcement officers found when they searched Hall's house in 2002." Although Hall had denied sexually abusing those individuals, his denials were deemed self-serving, and were demonstrably false, as Hall had made admissions in covertly recorded phone conversations.

The sentence imposed by the district court was an upward "departure." The notice requirements differ based on the nature of the sentence. A variance "is a sentence imposed outside the guidelines range when the court determines that a guidelines sentence will not adequately further the purposes reflected in 18 U.S.C. s. 3553(a)." A departure sentence refers to a non-Guidelines sentence imposed under the framework of the Guidelines. Departure sentences require advance notice; variances do not.

Absent an objection in the district court, the notice issue was reviewed under the plain error standard. The sentencing judge's decision was clearly based on the sentencing factors of section 3553(a). The sentence was therefore a variance, not a departure, and notice was not required.

The sentence was also substantively reasonable. Based on a consideration of the totality of the circumstances, the Eleventh Circuit noted an extensive history of sexual abuse of children; trafficking in child pornography; blaming of the victims upon apprehension; and the “immeasurable” harm inflicted on the young victims.

[Carmichael v. United States](#), 17-13822 (July 22, 2020)

The Eleventh Circuit affirmed the denial of a motion to vacate sentence under 28 U.S.C. s. 2255. The district court conducted an evidentiary hearing on claims that trial court counsel were ineffective for their failure to “(1) communicate Carmichael’s potential total sentence and the application of the sentencing guidelines; (2) seek a negotiated plea (as Carmichael requested); and (3) relay to him the plea offers” that had been discussed.

The district court had concluded that counsel had been deficient, and that was not at issue on appeal. The focus of the opinion was on the question of prejudice. In the context of claims alleging ineffective assistance regarding plea negotiations, the claimant must establish that there is a reasonable probability that but for counsel’s deficiency, “(1) the plea offer would have been presented to the court (i.e. the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances); (2) the court would have accepted the terms; and (3) under the offer’s terms, the conviction, or sentence, or both, would have been less severe than under the judgment and sentence that were, in fact, imposed.”

The second and third prongs of that test were not at issue; only the first prong was contested: whether the defendant would have accepted the 10- or 20-year plea offer that had not been communicated. The offer for a 10-year recommendation from the government would have required a guilty plea to unspecified offenses, a substantial forfeiture, and “super cooperation,” requiring information and testimony that could lead to the prosecution of other people. The district court had found that there was no evidence adduced at the evidentiary hearing that the defendant would, or even could, provide such cooperation. Additionally, the terms of the offer being addressed were found to be “vague.”

There were also some indicia in the record that the defendant would not have been willing to provide the required cooperation. This included a refusal to provide a proffer after his conviction. Carmichael argued that a proffer would not ensue until after a guarantee of a promised sentence. The Eleventh Circuit found that that “simply ignores the realisms of how pleas and cooperation work in the real world.”

The opinion then proceeds to provide an extensive explanation of how “proffer sessions” work for defendants who want to cooperate in return for the hope of a lenient plea agreement. The proffer session was described as merely a “gateway” into cooperation discussions, not the “capstone” of those discussions.

Furthermore, there was nothing in the district court record to suggest that even if the defendant did engage in the proffer session that he had any information that would have induced the government to offer him a particular cooperation deal.

There had also been a 20-year proposal that would not have required “super cooperation,” only substantial assistance consisting of “useful information.” Evidence regarding the defendant’s interest in this offer was mixed. The offer was initially rejected by Carmichael. He later showed some possible interest in it and engaged in discussions with counsel, but he delayed any decision by several months, by which time the deal was no longer available. The district court therefore did not err in concluding that Carmichael would not have accepted this deal if he had been fully informed about his potential guideline range.

#### First District Court of Appeal

[Dumas v. State](#), 1D19-4485 (July 20, 2020)

A Rule 3.800(a) motion to correct illegal sentence is not the proper procedure for challenging a designation as an habitual offender.

[Hawkins v. State](#), 1D19-4443 (July 21, 2020)

The First District, without discussion or factual background, cursorily cites several prior holdings referencing juvenile life sentence issues: 1) the statutory 25-year judicial review applies to offenses committed on or after July 1, 2014; 2) the Florida Supreme Court receded from its earlier holding that “resentencing is required for all juvenile offenders serving a sentence longer than twenty years without the opportunity for early release based on demonstrated maturity and rehabilitation;” and 3) a juvenile offender’s sentence does not implicate the Supreme Court’s decisions in [Graham v. Florida](#) or [Miller v. Alabama](#) “unless it meets the threshold requirement of being a life sentence or the equivalent of a life sentence.”).

[Gorman v. State](#), 1D19-4470 (July 21, 2020)

The First District, without providing the facts of the case, cites the witness sequestration statute, highlighting its language that the purpose is to prevent witnesses from hearing the testimony of other witnesses, and then cites the holding of an earlier decision which found that the rule of sequestration was not violated when a prosecutor met with a detective during a break and discussed potential testimony on recall, while the detective was still under oath.

[Joiner v. State](#), 1D19-4542 (July 21, 2020)

Joiner's appeal of an order denying a motion to correct illegal sentence was dismissed as being from a non-appealable order. Joiner was contending that the trial court failed to impose a mandatory minimum sentence. The challenged order was not adverse to Joiner and could not be appealed. The opinion notes that this issue is currently pending in the Florida Supreme Court.

[N.W. v. State](#), 1D20-2058 (July 24, 2020)

Secure detention of a juvenile for 10 days exceeded the statutory limit of 72 hours. N.W. was released on the 10<sup>th</sup> day, subject to home detention with ankle monitoring. His risk assessment instrument score was zero and did not authorize home detention absent statutory authority, none of which was cited by the trial court. A habeas corpus petition was granted and release of N.W. was ordered.

Third District Court of Appeal

[Calana-Reinoso v. State](#), 3D18-2114 (July 22, 2020)

The Third District affirmed the revocation of probation. The trial court did not abuse its discretion in denying a request for an interpreter. The defendant had appeared before the court on numerous prior occasions and spoke English without difficulty and without the aid of an interpreter. There was no indication that counsel had any problems communicating with the defendant.

On the day of the commencement of the proceeding, there was no request for an interpreter. The defendant spoke, at length, during plea discussions. A detective testified on behalf of the State. The hearing was then suspended and resumed two weeks later. The defendant decided to accept the State's plea offer. During the initial colloquy with the defendant, the defendant stated that she was comfortable

speaking English. The colloquy was then interrupted, when the defendant was granted leave for time to get his affairs in order. After several further proceedings, the plea agreement did not materialize.

The revocation hearing then resumed and the State called the defendant to testify. At the outset of the questioning, the defendant requested an interpreter, saying that she would feel more comfortable in Spanish, as it was her first language. The judge commented that she spoke English perfectly and noted that she had never requested an interpreter before. The request was denied.

Based on the extensive record of the defendant's communications in court in English and the judge's observation on the record that the defendant spoke perfect English, there was no abuse of discretion in denying the request.

[Sosataquechel v. State](#), 3D19-1095 (July 22, 2020)

The denial of a Rule 3.850 motion, after an evidentiary hearing, was affirmed. The defendant alleged that counsel was ineffective for failing to advise him that self-defense was a possible defense. The evidence presented at the postconviction hearing, however, did not support a claim of self-defense and counsel was therefore not ineffective.

The defendant testified that his wife was the aggressor, and stabbed him multiple times. His further testimony was in accordance with his prior affidavit, which had stated that he disarmed his wife and then proceeded to stab her. At the evidentiary hearing, he asserted that he did not recall what happened, other than the facts that he stabbed his wife twice in the stomach and twice in the back; he was in pain at the time, and therefore did not recall.

Trial court counsel, who represented the defendant when he entered a plea to the offense, testified that the defendant told him that he had purchased a set of knives, as a gift for his wife; that upon arriving home, he told his wife that they needed time apart, and that he then stabbed her and tried to kill himself. He never told counsel that his wife possessed the knife or that she had acted aggressively. When asked about his own injuries, the defendant said that they were self-inflicted.

“The record supports [counsel's] decision not to discuss self-defense with the defendant prior to engaging in plea discussions with him.” The defendant argued that counsel should not have believed him because he was under the influence of

medication. However, there was no evidence of dosages, the medications, or any side effects of the medications.

Although there was a notation in a file of a prior attorney, that the two fought over a knife and that the wife stabbed the defendant, the prior attorney was not called to testify; and counsel from the plea agreement testified that the defendant explained that that statement was “metaphorical.”

[Scott v. State](#), 3D20-0417 (July 22, 2020)

A mandamus petition was granted, compelling the trial court to accept the defendant’s written waiver of appearance at a scheduled sounding. Good cause was not shown to override the defendant’s waiver.

#### Fourth District Court of Appeal

[Long v. State](#), 4D17-3261 (July 22, 2020)

Long’s sentence was reversed on direct appeal. Although a trial court, at sentencing, may rely on out-of-state prior convictions for qualification of a defendant under the habitual offender statute, the out-of-state convictions must be for offenses that are substantially similar to Florida offenses. The Indiana offense at issue in this case was not substantially similar.

The Indiana conviction was for driving under the influence, which qualified as a felony if there was one prior DUI conviction within a five-year period. Florida’s DUI offense elevated the offense to a felony if there was a third conviction within a ten-year period. The difference between the statutes precluded the court from relying on them for habitualization.

[Hawn v. State](#), 4D19-647 (July 22, 2020)

Hawn’s conviction for lewd and lascivious molestation was reversed for a new trial. The trial court erred by denying the defendant’s effort to use prior inconsistent statements in the form of “negative impeachment.” The child’s “prior statement to the first person to whom she reported the alleged crime omitted significant facts as compared to her testimony at trial.”

“‘[A]n omission in a previous out-of-court statement about which the witness testifies at trial’ can be considered an inconsistent statement for impeachment

purposes, if the omission is a ‘material, significant fact rather than mere details and would naturally have been mentioned.’”

In this case, the victim “failed to tell her grandmother that [the defendant] touched her private area” in addition to her legs. This “omission goes beyond nit-picking and is a significant, material detail and one the Victim naturally would have mentioned to her grandmother when disclosing the alleged abuse.” The alleged victim was 10 years old at the time of the trial.

[Gentry v. State](#), 4D19-787 (July 22, 2020)

The Fourth District affirmed a conviction for first-degree murder and found that the exclusion of testimony proffered by the defense did not constitute fundamental error.

The defense at trial was that the defendant’s brother, Timothy, was the perpetrator. Gentry testified, and attempted to state that Timothy confessed to him. The defense argued that the confession was an admission against penal interest and was therefore admissible. The trial court correctly rejected that argument. Under section 90.804(2)(c), Florida Statutes, the statement against interest was not admissible because Timothy was not unavailable for trial and had, in fact, testified. Admissions under section 90.803(18) apply only to those of a party, and the brother was not a party to the proceeding.

On appeal, Gentry argued that the exclusion of the evidence violated procedural due process under the Supreme Court’s decision of Chambers v. Mississippi. That argument had not been raised in the trial court and did not constitute fundamental error. Defense counsel could have cross-examined Timothy when he testified and, if Timothy denied making the confession, the defense could subsequently have introduced it as a prior inconsistent statement. The defense had effectively presented the theory of defense and in closing argument heavily emphasized the inconsistencies between Timothy’s testimony for the prosecution. “If the jury disbelieved appellant’s story that he was in the bar all night and never entered the victim’s apartment, it is highly unlikely that they would have bought into the defense theory had they heard appellant say that his brother admitted to tying the victim up and leaving the apartment.”

## Fifth District Court of Appeal

[Sapeg v. State](#), 5D20-1104 (July 21, 2020)

The denial of a successive Rule 3.850 motion was affirmed. A trial court lacks jurisdiction to entertain such a motion while a related appeal is pending, but the trial court may determine if the motion is procedurally barred or untimely.

[Gilchrist v. State](#), 5D18-3545 (July 24, 2020)

The trial court partially granted a motion to correct sentence by granting juvenile sentence review proceedings, but otherwise denying resentencing. On remand from the Florida Supreme Court, the Fifth District affirmed the trial court's order in light of the recent decision in [Pedroza v. State](#), which held that resentencing was not required for juveniles who were not serving life sentences.

[Romero v. State](#), 5D19-2570 (July 24, 2020)

The Fifth District affirmed the revocation of probation and found that the evidence was sufficient to prove a willful and substantial violation of probation.

Romero was charged with violating probation by committing a trespass. An officer responded to a call that Romero and others were living in a wooded area. The officer ordered them to leave and warned them that if they returned to the property or its surrounding areas, they would be arrested. Romero indicated that he understood. The next day, Romero was found at the same location.

Some testimony described Romero, on the second day, as being 15-20 feet to the side of where he had previously been. When the officer approached, Romero stated that he had nowhere else to go. Romero testified and stated that he had moved 28 feet further back into the woods. The appellate court viewed the question as one of credibility as to whether Romero was at the same location. The State was not required to show that Romero knew where the exact property lines were; only that he intentionally was at a location that he knew he should not be at.

One judge dissented. The dissent would have found that there was no willful violation of probation because Romero was unaware of the boundaries of the property.

[Hall v. State](#), 5D19-2728 (July 24, 2020)

The Fifth District reversed the minimum mandatory portion of the defendant's sentence. The jury found that the defendant possessed a firearm. Based on possession, the trial court should have imposed a 10-year mandatory minimum; not 25 years.

[Johnson v. State](#), 5D19-3598 (July 24, 2020)

The revocation of community control was affirmed, but a special condition of probation referred to in the order of revocation was stricken, because that condition was neither imposed in the case nor alleged in the affidavit of violation.

[Galonska v. State](#), 5D20-1136 (July 24, 2020)

The summary denial of a Rule 3.850 motion was reversed for an evidentiary hearing. The motion alleged that trial counsel misadvised the defendant to reject a favorable plea offer of 41 months and that the defendant subsequently received a sentence of 15 years in prison. The trial court had denied the motion because it found no reference to an offer of 41 months in the court record.