Case Law Update
September 21, 2020
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Supreme Court of Florida

Lott v. State, SC19-1356 (Sep. 17, 2020)

The Supreme Court affirmed the denial of a successive Rule 3.850 motion. A Hurst claim was foreclosed by the Court's recent decision in Poole v. State, as there is no Hurst error when the jury unanimously finds the existence of at least one aggravating circumstance. In this case, Lott had three prior convictions for violent felonies, all of which had been found by unanimous juries.

Eleventh Circuit Court of Appeals

LcCroy v. United States,20-13353 (Sept. 16, 2020)

LeCroy, a federal death row inmate, appealed an order denying the postponement of his execution. He alleged that his three appointed attorneys had been unable to meet with him due to COVID-19. The Eleventh Circuit held that neither that Court, nor the district court, had authority to postpone an execution absent a showing that a stay is warranted, and no such showing had been made. Alternatively, the motion had no merit.

LeCroy alleged that two of his three attorneys were unable to meet with him face-to-face to prepare a clemency petition, and that two of the three were unable to be present at the scheduled execution. There was no statutory entitlement to face-to-face meetings with counsel for the preparation of a clemency petition. And, he still had access to one of the three attorneys in person, in addition to other forms of communication with the other counsel.

18 U.S.C. s. 3596(a) provides that an execution shall be implemented "in the manner prescribed by the law of the State in which the sentence is imposed." "Whatever that phrase means, we are confident that it does not extend to ensuring a lawyer's presence at execution."

Presnell v. Warden, 14-14322 (Sep. 16, 2020)

After a conviction and sentence of death for first-degree murder in 1976, Presnell received a new sentencing hearing in 1999. After the reimposition of the death sentence, Presnell eventually filed a federal habeas corpus petition, alleging ineffective assistance of penalty-phase counsel. At the time of the second penalty-phase proceeding, investigators obtained a statement from Presnell's mother asserting that she drank only socially. In subsequent collateral review proceedings, the mother stated in an affidavit that she drank bourbon during her pregnancy. Psychologists at that time opined that Presnell suffered from fetal alcohol spectrum disorder, based largely on the mother's affidavit. The district court denied the petition alleging ineffective assistance of counsel and the Eleventh Circuit affirmed the denial of the habeas petition.

Addressing defense counsel's alleged deficiency for not discovering the mother's use of alcohol and the fetal alcohol disorder, the Eleventh Circuit emphasized the thoroughness of counsel's investigation during resentencing proceedings, having interviewed the mother and many other family members, none of whom referenced the alcohol use. It was also significant that it took three teams of attorneys more than 25 years to discover this. A defense psychologist used for the 1999 resentencing proceeding, interviewed the mother as well, and it was reasonable for defense counsel to rely on that psychologist to determine whether any further questioning or factual development based on the mother's then-reference to "social" drinking was warranted.

Alternatively, Presnell failed to establish the prejudice prong of a claim of ineffective assistance of counsel. Had the evidence of binge drinking of the mother been discovered at the time of the resentencing hearing, the mother would have been presented as a witness, and arguments based on her alleged binge-drinking would then hinge on her credibility as a witness. The Court found that the mother, when providing such testimony, would have had many credibility issues with the jury. Binge drinking would likely have been known by other family members, who were interviewed at the time and did not reference it; and eight family members lived together in a small apartment. Some of those family members signed affidavits in close proximity to the one signed by the mother, referencing the binge drinking, but those other affidavits from family members did not contain any such reference.

United States v. Boyd, 18-11063 (Sep. 16, 2020)

Boyd appealed a sentence which was within the guidelines, after having waived the right to appeal or seek collateral review. The Eleventh Circuit dismissed the appeal, finding that the waiver was unambiguous. Boyd argued that the plea agreement was unclear as to who would calculate the guidelines range. The Court disagreed, as the agreement referred to the district court making that determination after receipt of the PSI. There was also language in the plea agreement that the estimates from counsel, the government or the probation office were not binding on the district court.

Franks v. Warden, 16-17478 (Sep. 16, 2020)

The Eleventh Circuit affirmed the denial of a federal habeas corpus petition. At the penalty phase of a capital case, trial counsel relied on a theory of residual doubt. The district court concluded, and the Eleventh Circuit agreed, that trial counsel was not ineffective for pursuing this strategy.

The evidence of guilt, for purposes of the guilt-phase of the trial, was characterized by the Eleventh Circuit as "overwhelming." "At the penalty phase, the state's aggravation case grew still stronger." The residual doubt theory was carried over from the guilt-phase strategy. The defense emphasized "good character" testimony from witnesses, family members, who testified to the effect that the Franks was never known to be violent. This testimony was coupled with mitigating evidence regarding Franks' troubled childhood. Franks argued that trial counsel was ineffective for failing to present additional mitigating evidence of the troubled childhood, substance abuse and cognitive deficits.

As to the decision to pursue residual doubt as a sentencing defense given overwhelming evidence of guilt, the Court found that the "brutal and aggravating nature of this crime – particularly the attacks on Debbie Wilson and her two young children, following on the heels of the double homicide at the pawn shop – could lead a reasonable attorney to conclude that without residual doubt, a life sentence would be difficult to sustain." And, Franks own trial testimony was corroborated by some additional testimony at trial.

Counsel were not deficient for failing to seek a mental health expert regarding cognitive deficits on the basis of either school records, inconsistent statements, or gaps in Franks' memory. One expert was called and testified about posttraumatic stress, accounting for memory gaps. In light of the extensive family interviews that

were done by counsel, which did not disclose any cognitive deficits, there was no deficiency.

Some evidence of the troublesome childhood and substance abuse was presented. The strategic decision not to present more, based on a conclusion of counsel that it was not going to be a winning strategy, was deemed a reasonable strategic decision, taking into consideration, inter alia, defense counsel's knowledge the jurors based on jury selection statements made by those jurors.

Third District Court of Appeal

Lopez v. State, 3D18-2217 (Sep. 16, 2020)

On appeal from a conviction for aggravated assault with a firearm, the Third District reversed for a new trial because the trial court erred in denying a requested instruction on justifiable use of non-deadly force.

An altercation between the defendant and another person during traffic carried over into a parking lot. The defendant stated that he had heard something being thrown into the bed of his vehicle, which he thought was a firearm. When the altercation continued in the parking lot, and he became afraid, he was looking for something for his protection and discovered the gun in the bed of his vehicle and he took it. The State contended that he then used it for the aggravated assault. The court granted the State's request that the instruction on justifiable use of force be limited to deadly force. The Third District concluded that there was sufficient evidence to support the request for the instruction on non-deadly force.

Warren v. State, 3D19-2075 (Sep. 16, 2020)

The Third District rejected Warren's argument that the trial court committed fundamental error during voir dire by positing prosecution-friendly hypotheticals to the venire. In conjunction with the preliminary discussion of reasonable doubt, the judge "used examples that included a cat eating a mouse in a box, a Star Trek transporter, and a Harry Potter spell. Such remarks carry the potential for confusion, a danger heightened by the fact that the remarks emanate from the bench." Although not finding fundamental error, the Third District reminded trial court judges that "while a judge is tasked with explaining to jurors the law they are to apply, and seldom stray from, the Florida Standard Jury Instructions."

Carrero v. State, 3D20-1030 (Sep. 16, 2020)

The Third District reiterated its own prior holding, and that of other Florida district courts of appeal, that the decisions of the United States Supreme Court regarding juvenile life sentences would not be extended to defendants who were young adults at the time of their offenses. Carrero was 22 at the time. The summary denial of a postconviction motion was affirmed.

Fourth District Court of Appeal

Eam v. State, 4D19-1035 (Sep. 16, 2020)

The Fourth District affirmed a conviction for second-degree murder and concluded that the trial court did not err in denying a motion to suppress.

Police tracked the defendant to a relative's house in Maryland and went there to interview her. A cousin permitted the officers to enter the house. The defendant was told that she was not under arrest. The police wanted her to go to a local station, but she declined and inquired about counsel. An officer responded that she was not going to be provided with counsel because the interview was voluntary. The interview was conducted in the kitchen, with the defendant's two cousins present.

The Fourth District agreed with the trial court's conclusion that the questioning that ensued was not custodial. Therefore, the defendant was not entitled to Miranda warnings or to an attorney. Other facts that the Court emphasized included the lack of any significant confrontation of the defendant by the officers with inconsistencies or evidence to make her feel that her freedom was restrained; the absence of threats; and the location of the interview (a kitchen).

Alexander v. State, 4D19-3588 (Sep. 16, 2020)

The denial of a Rule 3.850 motion alleging ineffective assistance of counsel was affirmed. At the evidentiary hearing it was established that the defendant's first counsel failed to advise him of the potential for habitual offender sentencing when conveying a plea offer. Subsequent counsel did advise him of that potential, thereby curing original counsel's omission. The subsequent advice was rendered in conjunction with a renewed plea offer with the same terms.

Fifth District Court of Appeal

Kirk v. State, 5D19-3386 (Sep. 18, 2020)

Kirk violated conditions of probation for a third time and the trial court imposed an incarcerative sentence. Kirk argued that the trial court was required to either continue or modify the conditions of probation, based on section 948.06(2)(f)1., Florida Statutes (2019). Subject to certain exceptions or a waiver by the defendant, that provision provides that the court shall modify or continue probation upon a violation when "any" of four enumerated circumstances exist: a) the term of supervision is probation; the probationer does not qualify as a violent felony offender of special concern; the violation is a low-risk technical violation; the court has previously found the probationer in violation.

The Court engaged in an analysis of the provisions of the statute and concluded that although the term "any" was used, the requirement of continuing or modifying probation existed only when all four of those circumstances existed.

One judge dissented because the issue was moot as the sentence had been fully served. The majority of the Court entertained the issue because of the likelihood that it would be a recurring issue. The Court urged the legislature to review the statute and consider amending it.

Cruz v. State, 5D20-228 (Sep. 18, 2020)

When Cruz entered a plea to an agreed term of 14 months, she requested time to get her affairs in order. The court granted that request and advised her that if she was arrested during the interim or failed to show up for sentencing, she could be sentenced to the maximum for the offense. She failed to show up for the scheduled sentencing, and when she was next in court, she was sentenced to five years, less than the maximum.

At a subsequent hearing, she explained that she had transportation problems and that by the time she arrived, the courtroom was locked. She further explained that she had her mother contact the Public Defender's Office. The trial court nevertheless found that the failure to appear was willful.

On appeal, Cruz challenged the finding of willfulness. The Fifth District affirmed the trial court's order, concluding that the issue was not preserved for appeal. Defense counsel, in the trial court, did not contest the finding of willfulness.

Counsel expressly stated that some form of sanction was appropriate, and the trial court acceded to that request by imposing a sentence greater than the one called for in the plea agreement, but less than the statutory maximum. The Fifth District noted good cause for trial counsel's strategy. Cruz did not turn herself in for another two months after the originally scheduled sentencing hearing.

State v. Dagostino, 5D20-658 (Sep. 18, 2020)

The defendant was charged with capital sexual battery and sought a 12-person jury. When the trial court granted that request, the State sought certiorari review, and the Fifth District granted the petition. Although the offense is labeled capital sexual battery, and, once upon a time was subject to the death penalty, the sentence of death, as a matter of law, may no longer be imposed for the offense. As the sentence of death cannot be imposed, there is no entitlement to a 12-person jury.

Williams v. State, 5D20-817 (Sep. 18, 2020)

The summary denial of a Rule 3.850 motion was reversed as to one of its multiple claims. In that claim, Williams alleged that counsel was ineffective for failing to obtain a competency evaluation.

The claim as asserted in the motion was facially insufficient. The trial court failed to grant leave to amend the claim, however. The motion had alleged that two doctors had concluded that Williams was intellectually disabled. That, however, did not amount to an allegation that they found him to be incompetent.