Case Law Update
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Supreme Court of Florida

Craft v. State, SC19-953 (Nov. 19, 2020)

The Supreme Court affirmed a conviction for first-degree murder and the sentence of death. Craft pled guilty to the charge of first-degree murder. He also waived the right to counsel and represented himself at both the guilty plea and the penalty phase, which was a bench trial. His challenges on appeal were to the death sentence. The Court, however, engaged in its mandatory review under Rule 9.142(a)(5), Fla.R.App.P., to determine whether the guilty plea was knowingly, intelligently and voluntarily entered.

Craft waived his right to present mitigating evidence. He argued on appeal that the trial court erred by accepting that waiver. Notwithstanding the waiver, this was not a case where mitigation was waived. While it was limited, Craft did present testimony from four family members and made his own statement during the penalty-phase proceedings. As mitigating evidence, however limited, was presented, the Supreme Court refused to find a waiver of the right to present mitigation. Nor did the trial court err in accepting the limited presentation. "'[C]ompetent defendants have a right to control their own destinies.'" Additionally, the trial court engaged in several discussions with Craft about the importance of mitigation, the court ordered a PSI, and the court considered mitigation where it could be found elsewhere in the record.

Craft challenged the "little weight" that the court accorded to the mitigating circumstance of childhood trauma. The Supreme Court reviewed the record and concluded that the trial court did not abuse its discretion. The trial court explained its reasoning, and the court accorded greater weight to "general mental health mitigation," which overlapped the childhood trauma mitigator. There was no showing that the trial court's assessment was arbitrary or unreasonable.

Craft further argued that the trial court erred by not requiring the State to present any mitigating evidence in its possession, or by not calling mitigating witnesses or appointing special counsel. Craft did not identify any such mitigation in the possession of the State. And, the State advised the trial court that it had done

its best to come up with non-statutory mitigators, and referenced the PSI, with statements from family members appended, as well as mental health evaluations. As Craft had the right to control his own mitigation, the trial court did not abuse its discretion in failing to call witnesses or appoint special counsel. Furthermore, no such witnesses were identified by Craft.

Finally, Craft argued that the trial court failed to consider nine items of mitigating evidence. Several of them were found by the Supreme Court to have been included within the childhood trauma mitigator that the trial court did consider, such as having been born with an umbilical cord wrapped around his neck; and the failure of his mother to obtain mental health treatment for him. The State and the Supreme Court both agreed that the trial court did fail to consider two factors – employment history and the saving of someone's life. However, in light of the strength of the four aggravating factors – HAC, CCP, prior violent felony, and prior conviction of another capital felony – there was no reasonable possibility that the omitted mitigation would have affected the outcome.

Eleventh Circuit Court of Appeals

United States v. Johnson, 17-15259 (Nov. 19, 2020)

Johnson pled guilty to charges of conspiracy to possess and distribute more than 100 kilograms of marijuana and conspiracy to commit money laundering. He appealed the concurrent 151-month sentences he received and the Eleventh Circuit affirmed.

Johnson challenged the sufficiency of evidence to hold him responsible for more than 400 kilograms, the threshold for a base offense level of 26 under the Guidelines. The Court disagreed; the Court considered the number of shipments for which Johnson had involvement (174 over more than two years); Johnson's admission to distributing 6-12 pounds per week; his estimate of making $600-$1,200 per week; with an average of two shipments per week.

The district court did not err in applying a two-level enhancement for obstruction of justice. The facts supported the court's finding "that Defendant unlawfully photographed discovery materials, used the photographs to demonstrate to Gibbs, a potential witness, that he had 'allllllll[sic] the paper work' regarding snitches, and threatened to harm at least one snitch, Brownell, when he declared, 'he's mine.'" Johnson focused on the examples of obstruction in the Commentary to the Guidelines. The Court observed that that list was not exhaustive. Johnson's

conduct was viewed as threatening to do bodily harm against those who testified against him.

The district court did not err in applying the two-level Guidelines enhancement for an offense that was a part of a pattern of conduct engaged in as a livelihood. Johnson made more than $100,000 from the drug sales over a two-year period, which far exceeded the minimum wage (a factor in the Guidelines enhancement), and he reported less than $10,000 in legitimate income for the relevant two-year period. Johnson argued that he had "under-the-table" income from an auto painting job. Although there was no direct evidence of such earnings, even crediting it at the hourly wage Johnson claimed for full time for the six months he said he had worked there, the potential income from that would not have affected the district court's reliance on the enhancement.

The district court did not commit plain error for failing to apply a one-level reduction for timely acceptance of responsibility. The court had given Johnson a two-level reduction for acceptance of responsibility; he sought an additional one-level reduction. This issue focused on whether the Government could withhold a motion for the additional reduction where the defendant had engaged in obstruction of justice. The only clear limit on the Government's ability to withhold such a motion, based on a review of extensive case law, was that the withholding of the motion could not be based on a defendant's refusal to waive an appeal. Beyond that, the relevant case law was not clear about anything. Under such circumstances, plain error, based on the Court's failure to grant such a reduction sua sponte, did not exist.

Gonzalez v. United States, 19-11182 (Nov. 20, 2020)

The Eleventh Circuit affirmed the district court's finding that a petition for writ of error coram nobis was untimely. Removal proceedings against Gonzalez commenced in February, 2016, based on his 2002 guilty plea to attempted alien smuggling. Gonzalez filed a petition to vacate the conviction in October, 2017.

Gonzalez waited 20 months from the time he learned of possible deportation consequences before filing his petition challenging the conviction. Whether Gonzalez waited 20 months or 15 years before challenging the conviction, he lacked sound reasons for his delay. He waited not only until the possibility of immigration consequences became imminent, but for another 20 months thereafter. An attorney for Gonzalez had decided not to do anything for almost a year after February, 2016, based on a calculation that Gonzalez would not actually be removed even if he

received a removal order. That tactical decision was a fatal blow to the coram nobis petition.

First District Court of Appeal

Wilson v. State, 1D19-2363 (Nov. 20, 2020)

The First District dismissed an appeal from a downward departure sentence, because the trial court's discretionary decision to deny a departure is not a proper basis for an appeal.

After hearing Wilson's arguments and evidence regarding apologies for his conduct, the effects of medication, and stress from caring for an autistic child, the trial court found that the offense was not isolated because of separate incidents with other minor victims. The court concluded that the defendant had not satisfied the requirements for a downward departure.

The First District addressed an issue for which it found Florida's appellate courts to be split: "if the trial court has not refused to exercise its discretion, and the sentence is not illegal, not below the lowest permissible sentence, and does not exceed the statutory maximum, can a defendant appeal an order denying a motion for a downward departure sentence?" "Because the trial court understood its discretion to grant a downward departure sentence . . . we lack authority to review the trial court's decision not to grant Wilson's motion for a downward departure." The Court certified conflict with decision of the Second, Fourth and Fifth Districts. The appeal was dismissed.

State v. Rush, 1D19-3577 (Nov. 20, 2020)

Rush "engaged in a vicious attack on the victim in his home arising from an on-line sexual hook-up gone bad." The judge rejected the defendant's request for a downward departure, but the court then, on its own, imposed a downward departure, stating that it was because the "victim was an initiator, willing participant, aggressor, or provoker of the incident." The State appealed and the First District reversed, finding that there was no evidence to support the reason.

The First District reviewed the facts of the case and emphasized that the victim's home had been burglarized and that the victim therefore could not have been a willing participant. "The victim was entirely peaceful and engaged in no aggressive or willful acts whatsoever; the attack on his arose solely from Rush's

unilateral decision to confront the victim, forcibly enter his home, and then shoot and beat him." The motivating factor for the incident "was solely Rush's anger that he had been misled into believing the victim was a female and not a male." The victim had initially been misleading as to gender but did disclose the truth.

Smith v. State, 1D19-2817 (Nov. 18, 2020)

The First District affirmed convictions for first-degree murder and tampering with evidence.

The defense sought to introduce into evidence a third-party confession, from Peterson, who was deceased at the time of the trial. Another defense witness, Gailyard, testified at a deposition that Peterson had confessed to the shooting. The trial court excluded this testimony due to the absence of corroboration. One of the elements of admission of a statement against penal interest, under section 90.804(2)(c), Florida Statutes, is that there be corroboration. The First District further considered potential admissibility of the third-party confession as a matter of constitutional law, under the Supreme Court's decision in Chambers v. Mississippi. Analyzing factors relevant under Chambers, the statement was still inadmissible. The alleged confession was in private, to Gailyard. It was said to have been made more than a month after the offense. And, again, there was a lack of corroboration and reliability issues therefore existed. The trial court therefore did not abuse its discretion in excluding this evidence.

A comment by the prosecutor in closing argument did not impermissibly impede upon the presumption of evidence where the comment was linked to specific evidence, as in a prior case where a prosecutor argued that the evidence at trial removed the presumption of innocence. In this case, the prosecutor stated that the evidence presented to the jury "lifted that presumption of innocence from that man. That cloak of innocence that he came in here wearing piece by piece, rip by rip has been ripped away from him by each and every one of those witnesses who took the stand. . . ."

The First District also rejected an argument that the trial court, at sentencing, failed to consider all of the required factors under section 921.1401, for sentencing of a juvenile. Absent objection in the trial court, the claim was reviewed for fundamental error. The First District accepted the trial court at its word when it stated that it reviewed the statutory factors. The defendant's argument was based on the judge's statement, regarding the possibility of rehabilitation, that it was adequately addressed by the 25-year mandatory minimum sentence. The defense

argued that this meant that the judge did not consider rehabilitation as a factor. The First District found that the judge's comment was more reasonably construed as saying that the judge did consider this factor, but that it did not require anything more than providing the opportunity to demonstrate rehabilitation at the review hearing after 25 years.

Williamson v. State, 1D20-2849 (Nov. 18, 2020)

The First District previously denied a habeas corpus petition and now wrote an opinion explaining its reasons for the denial. The trial court denied the defendant's motion for bail on a charge of second-degree murder. The trial court conducted an evidentiary hearing on the motion.

As the charged offense was punishable by life, the State had to demonstrate that the proof of guilt was evidence and the presumption of guilt was great, in order to support the denial of bail. The trial court considered the arrest report and a surveillance video. Williamson had called 911 and stated that he had stabbed someone. Police arrived and found the victim, who later died. A property manager had told police that he had heard an altercation between the defendant and the victim, but did not hear the victim threaten the defendant. An eyewitness told police that the victim may have taken a "swipe" at the defendant's cell phone, and that the defendant then swung his hand toward the victim, and the witness then realized that the defendant had just stabbed the victim. In a post-arrest statement, the defendant told the police that the victim had been banging loudly on the defendant's door, that the defendant grabbed a knife and opened the door, that the victim "got up in his face" and "spat" at him, that the defendant became disoriented and swung the knife downward, and then saw the victim fall. The surveillance video contradicted this statement as it showed the victim walking away from the defendant's apartment when no one answered. About 20 seconds later, the defendant emerged, the victim returned, Williamson demanded the return of his hammer and screwdriver from the victim, Williamson advanced towards the victim, the victim retreated, and Williamson pushed the victim towards the ground. The actual stabbing occurred off-camera, but afterwards, Williamson was heard stating that he acted in self-defense, including the first time that he stabbed the victim and forced the victim to the ground. Williamson was heard stating that the stabbing was retaliation for the victim spitting at him.

Second District Court of Appeal

Ortiz-Lopez v. State, 2D18-4910 (Nov. 18, 2020)

The trial court erred in denying a motion for discharge under the speedy trial rule.

The offenses, including false imprisonment, occurred in Lee County, on October 8, 2017, and a warrant was issued on January 23, 2018. Ortiz-Lopez was arrested in Hillsborough County on February 2, 2018, and the arrest report was filed with the Lee County court on February 13, 2018. The report referenced the three Lee County offenses.

After a violation of probation proceeding in Hillsborough County, the defendant was transferred to Lee County on July 23, 2018 and had a first appearance on July 24, 2018. An information had still not been filed in Lee County. On August 9, 2018, the defendant filed a pro se motion for discharge under the speedy trial rule. The motion was not received or docketed until August 20, 2018, the date on which the State first filed an information in Lee County.

On August 23, 2018, the court treated the defendant's motion as a notice of expiration of the speedy trial time period. A Faretta hearing was also conducted, and counsel was appointed and the speedy trial issue was next addressed on August 30, 2018. Counsel was not prepared to argue the speedy trial motion and requested that it be addressed on September 4, 2018. Counsel also announced that counsel would not be prepared for trial on September 4, 2018. The State argued that the pro se motion should be treated as a demand for speedy trial. The court set the case for trial for September 5, 2018.

At the September 4th hearing, defense counsel argued that based on the date of arrest, the speedy trial period expired on July 27, 2018. Counsel further argued that the 10-day window period of the speedy trial rule had already expired as well. This argument was based on the mailbox rule, as the defendant was pro se at the time of submitting the first speedy trial pleading to the court – the August 9th motion which was not received by the court until August 20th. The State argued that due to independent charges in Hillsborough County, the defendant was not arrested on the Lee County charges until July 23rd, when he was returned to Lee County.

The trial court denied discharge, finding that the August 9th motion was not properly titled and attributed subsequent delays to the defendant due to the request

for counsel on August 23rd. After another Faretta hearing, the defendant ended up representing himself. The first trial ended in a mistrial and the second trial commenced on November 20, 2018. The trial court found that the Lee County arrest had occurred on February 13, 2018.

The Second District concluded that the speedy trial period had expired prior to the filing of the information, and that the State was therefore not entitled to any recapture period. The correct date of arrest was February 2, 2018. Based on a 175-day speedy trial period, that period expired on July 27, 2018. Even using the date of February 13, 2018, as the trial court did, the date of the filing of the arrest report in Lee County, the period expired on August 13, 2018.

In the appeal, the State presented argument based upon alleged discrepancies in the docket entries in Lee County. Regardless of any such disputes, the trial court had made a factual determination which compelled the conclusion that there was an arrest no later than February 13th.

The Court also rejected the State's alternative argument that the speedy trial period did not commence until July 23, 2018, when the defendant was returned to Lee County. The relevant rule, 3.191(e), however, creates an exception for prisoners outside the jurisdiction when they are outside the jurisdiction and an information has already been filed. The information had not been filed in this case at that time, and the exception was therefore inapplicable.

Third District Court of Appeal

Kopp v. State, 3D19-2354 (Nov. 18, 2020)

The Third District affirmed multiple convictions and held that the trial court did not "abuse its discretion in allowing identification testimony that the person depicted in video footage of the underlying crime was Kopp." The video was of poor quality and the witness was therefore in a better position than the jury to identify the individual in the video.

The surveillance video was from a garage, and the witness in question was a security guard. The security guard had seen Kopp, both in person and on surveillance video, many previous times, including one 40-minute, face-to-face conversation with Kopp.

State v. Boykins, 3D20-1303 (Nov. 18, 2020)

The State sought pretrial certiorari review of an order directing the State to produce for deposition a witness who was not within the control or custody of the State. While the trial court's order was a departure from the essential requirements of law, the State was not entitled to certiorari relief because it could not demonstrate the irreparable harm that is required for certiorari review.

The State had listed the witness in question in its discovery pleadings, but the defense had difficulty serving a witness subpoena. The State subsequently advised the court that the witness was homeless and that the address provided was the best and only address that it had. The trial court compelled the State to produce the witness for deposition within 30 days.

The certiorari petition was deemed premature, because the trial court had not yet imposed any sanction on the State for noncompliance with the order. "If the State fails or is unable to comply, leading the trial court to exclude the witness or impose some other sanction on the State, this would represent the type of irreparable harm that satisfies the jurisdictional prong required for certiorari review." Alternatively, if the trial court subsequently dismissed the case for the State's noncompliance with the order, the State would then be able to seek review of the order of dismissal by way of an appeal.

Fourth District Court of Appeal

Metellus v. State, 4D19-1107 (Nov. 18, 2020)

The Fourth District's opinion of November 18, 2020 was subsequently withdrawn and replaced with a revised opinion in January 2021, and the case will be addressed in a subsequent issue of the Case Law Update.

Quinn v. State, 4D19-2006, 4D19-2007 (Nov. 18, 2020)

The Fourth District held that the trial court erred in finding that the defendant violated probation with respect to one of the multiple grounds of violation. The trial court committed fundamental error in finding that Quinn had committed criminal mischief while on probation.

Although Quinn broke a vase during an altercation with the victim, there was no evidence regarding the willfulness or malice required to prove criminal mischief.

Criminal mischief can not be established through transferred intent. The acts of chasing the victim and swinging a metal object to hit the victim did not suffice to prove the intent required for criminal mischief with respect to the vase.

Moore v. State, 4D19-2941, et al. (Nov. 18, 2020)

The trial court erred in sentencing when it concluded that "it had no discretion to run the defendant's prison releasee reoffender (PRR) sentences concurrently." Moore was not, however, entitled to resentencing because it was clear from the record that the trial court would have imposed the PRR sentences consecutively even if it had understood that it had discretion to impose them concurrently. The judge had expressly stated on the record during sentencing that even if discretion existed, the judge would impose the sentences consecutively.

Olenchak v. State, 4D19-3007 (Nov. 18, 2020)

The defendant appealed an order summarily denying an amended Rule 3.850 motion for further proceedings and the Fourth District reversed for further proceedings on three of the multiple claims.

One of the claims alleged that counsel was ineffective for failing to object to the prosecutor's wrongful comment that intent was not an element of the crime. The issue of intent was a critical issue in the case and the defense was based on a lack of intent. This was a facially sufficient claim, and the comment defense counsel failed to object to had the potential to affect the outcome of the trial, even though the trial court instructed the jury on the elements of the offense.

Another claim alleged that trial counsel had an erroneous understanding of the law – that sexual battery was a specific intent crime. In a prior direct appeal, the Fourth District had already noted that this was so.

A third claim related to potentially relevant and admissible evidence from a prior trial in the case. Defense counsel agreed with the prosecution, prior to the second trial, to exclude this evidence "about the victim previously accusing the defendant of penile penetration in the first case." This would have included a treatment center report "that the victim was a virgin with hymen intact and no indicia of sexual contact or injury." While defense counsel's stipulation to exclude this evidence may have been done for strategic reasons, a claim of ineffective assistance of counsel, as a general rule, can not be denied without an evidentiary hearing when its disposition hinges on defense counsel's strategic reasons.

The trial court was direct to either attach court records conclusively refuting the claims or to grant an evidentiary hearing, as to each of the claims.

Johnson v. State, 4D20-792 (Nov. 18, 2020)

The trial court's denial of a Rule 3.850 motion as an untimely and unauthorized successive motion was affirmed. The motion set forth a claim on the basis of the United States Supreme Court's decision in Carpenter v. United States, 138 S.Ct. 2206 (2018), which addressed cell phone tracking data and the Fourth Amendment. Carpenter does not apply retroactively to previously final convictions.

Fifth District Court of Appeal

State v. Hart, 5D19-3390 (Nov. 20, 2020)

The Fifth District reversed the trial court's order suppressing evidence. The trial court had concluded that statements in three affidavits in support of search warrants were conclusory, and were not facts, and that probable cause was therefore not established to support the search warrants. Three separate warrants had been signed by three different magistrates.

The search warrants related to the investigation of an automobile accident. The defendant was observed in the driver's seat in the aftermath of the accident. The first warrant sought a blood test for alcohol. The second warrant sought, as part of a search of the defendant's then-impounded vehicle, fingerprint, fabric and fiber evidence, among other items. The third affidavit sought buccal swab samples to compare to a sample previously retrieved from the driver's side air bag cushion, which had been obtained from the second warrant.

The three warrants were issued at different times, the second a few days after the first, the third a few weeks later. All reiterated the same basic facts. The allegations at issue in the affidavits pertained to "statements of the front-seat passenger about Appellee being impaired and the observations by Trooper Hawkins of Appellee's physical appearance at the hospital."

The Fifth District held that the affidavits set forth sufficient facts to establish probable cause as to DUI manslaughter, and further established that relevant evidence could be found in the vehicle and in the defendant's blood and DNA samples. The passenger told investigating officers that the defendant was "impaired

and drinking too much" "just prior to the accident." The investigating officer observed the defendant "having bloodshot glassy eyes and slurred speech and drooling from the mouth at the hospital shortly after the accident." Another officer placed the defendant as the driver of the vehicle. The officer executing the affidavit, under the fellow officer rule could rely on the observations of these other officers.

Collito v. State, 5D20-1776 (Nov. 20, 2020)

In a petition alleging ineffective assistance of appellate counsel, Collito alleged that counsel should have argued on direct appeal that the judgement of conviction referenced the incorrect statute regarding the sexual battery for which he was convicted. Appellate counsel was not ineffective, however, because the claim could not have been raised on direct appeal. Collito entered a plea to the charge, and, after a guilty plea or plea of no contest, issue that may be raised on direct appeal are strictly limited under Rule 9.140(b)(2)(A). As this claim did not fall within any of the enumerated issues that may be raised on direct appeal, appellate counsel could not have asserted the claim on direct appeal and was therefore not ineffective.