Case Law Update
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Supreme Court of Florida

State v. Maisonette-Maldonado, SC19-1947 (Dec. 3, 2020)

In a case involving dual convictions for vehicular homicide and fleeing and eluding causing serious injury or death, the Court held that the "single homicide" rule does not preclude separate convictions for the two offenses.

The Court recognized that prior decisions applied the single homicide rule as a double jeopardy bar to multiple convictions involving the same victim. The Court went through section 775.021, Florida Statutes, as it exists now since its 1988 amendment, and found that none of its provisions encompassed the single homicide rule. The 1988 statutory amendment superseded earlier case law on the subject of the single homicide rule.

In addition to the single subject rule not being part of double jeopardy analysis, the Court went on to find that the two offenses at issue, under double jeopardy Blockburger analysis, each had an element that was not found in the other. Thus, double jeopardy did not bar the dual convictions. The fleeing or eluding offense required fleeing or eluding, which was not required in the vehicular homicide statute. Vehicular homicide required the killing of the victim, which was not a mandatory element of the fleeing/eluding offense.

Eleventh Circuit Court of Appeals

United States v. Taylor, 19-12872 (Dec. 9, 2020)

In 2003, Taylor pled guilty to the charge of conspiracy to possess cocaine with the intent to distribute. The quantities were found to be more than five kilos of powder and more than fifty grams of crack. At the time, sentencing for either of these was a minimum of ten years, up to life in prison. As the quantities involved were more than 1.5 kilos of crack or 150 kilos of powder, the sentence under the Guidelines was life in prison. The judge had expressed reservations about the sentence at that time. After the Supreme Court's decision in United States v. Booker, the sentence was reduced to 360 months in prison.

In 2010, Congress enacted the Fair Sentencing Act to reduce disparities in sentencing between crack cocaine and powder. In 2018, the First Step Act authorized reforms of the Fair Sentencing Act to apply retroactively to certain crack-cocaine offenses. In 2018, Taylor sought resentencing as a result of the Fair Sentencing Act. The district court concluded that he was not entitled to relief because the offense for which he was convicted was not a covered offense.

The Eleventh Circuit disagreed. "Taylor's offense was 'a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2' of the Fair Sentencing Act, and he committed his offense before the Fair Sentencing Act became effective. That means his offense is a covered offense." On remand, the district court was authorized to, but was not required to, reduce the sentence. Potential relief at a resentencing proceeding would not be de novo; it would be limited to the sentencing relief specified in the Fair Sentencing Act's provisions, which triggered different mandatory minimum sentences for recalculated quantities of cocaine.

Santos v. United States, 17-14291 (Dec. 10, 2020)

Santos appealed from the denial of his third section 2255 petition. He challenged the application of the Armed Career Criminals Act to his 1994 sentence for possession of a firearm and ammunition as a convicted felon He argued that the sentence was unconstitutional based on Supreme Court case law finding the residual clause of the ACCA to be unconstitutionally vague. The Eleventh Circuit affirmed the denial of the petition.

Santos was unable to prove that the district court, when imposing sentence, relied solely on the residual clause of the ACCA. Santos argued that his 1987 Florida state court conviction for battery on a law enforcement officer did not qualify as a predicate ACCA offense under the elements clause of the ACCA. That was not relevant because he did not demonstrate that he was sentenced solely under the residual clause.

At sentencing, the judge referenced the BOLEO offense as a crime of violence, but did not specify whether that was under the elements clause or the residual clause. Other factors pertaining to the sentencing hearing did not provide any clarification. As Santos could not demonstrate that the district court more likely than not relied on the residual clause when making the determination that the

BOLEO qualified as a predicate, the district court could not reach the ensuing claim that BOLEO did not qualify as a predicate under the elements clause.

Case law from the Supreme Court regarding the unconstitutionality of the residual clause applied retroactively, creating a new one-year window for raising such a claim. However, convicted offenders could avail themselves of that only if they satisfied the requirement of demonstrating that the federal court more likely than not relied on the residual clause when applying the ACCA enhancement.

First District Court of Appeal

Ford v. State, 1D18-4628 (Nov. 30, 2020)

The First District affirmed convictions for second-degree murder and attempted second-degree murder.

A challenge to the insufficiency of evidence for second-degree murder was found to be unpreserved. Additionally, the claim was no longer viable, as it was based on the special circumstantial evidence standard of review – i.e., whether the State rebutted a reasonable hypothesis of innocence – as the Florida Supreme Court has recently abandoned that standard of review. And, under the current standard of review, the evidence was sufficient. Ford was observed, in a vehicle, with a firearm just before the shooting. He rolled down the window, as did another occupant, and shots were heard. Right after the shots, a witness observed a firearm on the back seat next to Ford. Another participant later confessed to having been a party, along with Ford, to those who rolled down their windows and started shooting, and seeing people fall. Ford was a party to that conversation and did not dispute it. Forensic evidence was consistent with the bullet that killed the victim as having coming from Ford's firearm. And, Ford could have been found guilty as a principal, even if the fatal shot was fired by one of the other participants, even though the information did not specifically charge him as a principal. Additionally, firing into a crowd was indicative of the requirements of second-degree murder that the act be imminently dangerous to human life and demonstrating a depraved mind.

For the same reasons, the Court found the evidence to be sufficient as to charges of attempted second-degree murder and discharging a firearm from a vehicle.

Finally, the use of the phrase "and/or" between the defendants' names did not constitute fundamental error. The jury was instructed on the law of principals, and

was given a "multiple defendants" instruction, which "reinforced that the charges and evidence against each defendant must be considered separately, and a guilty verdict for one defendant must not affect the verdict for another defendant." The jury also specifically found that Ford discharged a firearm.

Holloway v. State, 1D19-2865 (Dec. 10, 2020)

The First District affirmed convictions for two counts of sexual battery. There was no error in excluding hearsay statements which were proffered to show the victim's state of mind.

Holloway's defense was that of consensual sex. He proffered testimony from his boss, who stated that Holloway was at the boss's house, communicating with the victim through a video messaging service. The boss was three feet away and was positive the victim was on the other end. The boss asserted that he heard the two of them talking about sexual acts.

The defendant failed to prove that the hearsay statements showed the victim's state of mind "at the time of the offense or just before the sexual encounter with Holloway." The boss did not state when the conversation occurred. And, the fact that a conversation regarding sexual acts was overheard did not mean that the victim consented to having sex with Holloway.

Johnson v. State, 1D19-1474 (Dec. 10, 2020)

On rehearing, and without discussion, the First District certified the following question of great public importance:

> GIVEN THE REQUIREMENTS OF SECTION 316.062(1), FLORIDA STATUTES, DOES CONVICTION ON MULTIPLE COUNTS UNDER SECTION 316.027(2), FLORIDA STATUTES, STEMMING FROM A SINGLE CRASH INVOLVING MULTIPLE VICTIMS, EXPOSE A DEFENDANT TO MULTIPLE PUNISHMENTS FOR ONE OFFENSE IN VIOLATION OF THE DOUBLE-JEOPARDY PROTECTIONS OF THE U.S. CONSTITUTION.

Second District Court of Appeal

A.C. v. State, 2D18-1643 (Dec. 11, 2020)

An order of restitution was reversed because the trial court "did not make any findings regarding expected earning capacity prior to determining the amount of restitution." And, the imposition of a Public Defender's fee of $100 was reversed because the trial court did not provide A.C. with notice and opportunity to be heard.

Parker v. State, 2D19-2013 (Dec. 11, 2020)

The Second District affirmed an order revoking probation. Parker was charged with violating terms of probation by flying a drone over the victim's apartment complex. He moved to suppress photos retrieved from his cell phone during a search of his residence. Parker argued that there was no warrant for the search of the phone. The search was conducted by Parker's probation officer.

A probationer has a diminished privacy interest, although a heightened privacy interest in one's cell phone still exists. Section 948.03, Florida Statutes, authorizes a probation officer to visit a probationer's home at any time. The defendant had signed a form stating that the probation officer has the right to search his residence. There were indicia that Parker was in violation of the condition of probation barring contact with the victim, as well as reasonable suspicion of possession of a firearm. Two GPS tracking devices had previously been found on the victim's vehicle, thus alerting the probation officer to Parker's likely use of technology for the purpose of stalking the victim. It was therefore "reasonable for the PO to conduct a warrantless search of Mr. Parker's phone; technology was a tool for Mr. Parker to stalk the victim. Undoubtedly, after observing the drone in plain view, and given Mr. Parker's history of using various technology to surveil the victim, the State's interest in searching Mr. Parker's was outweighed [sic] by any privacy interest he had in the phone." The search was thus reasonable and consistent with the protections of the Fourth Amendment and its counterpart in the Florida Constitution.

Garcia-Rodriguez v. State, 2D19-2969 (Dec. 11, 2020)

An order revoking probation was reversed because the State failed to prove the two alleged violations.

One of the alleged violations was for visiting a school. The defendant was in the parking lot of a strip mall and stopped at the south end of the lot for about 3 ½ minutes. A small, private elementary school was located at that end of the mall. The other violation charged was for failing to maintain required entries in a driving log. The log was complete through April 24th but was missing the last five days of the month, when it was turned in at a May 1st meeting with the probation officer.

With respect to the prohibition against visiting a school, the Court held: "parking for three and one-half minutes in a strip mall parking lot near where a private school happens to be located, is not, by any reasonable definition, 'visiting' a school."

The written probation condition required that the defendant maintain a driving log; it had no other specifications. The probation officer orally instructed the defendant to enter detailed information for every time that Garcia was operating a vehicle. The Second District found merit to three distinct challenges to this violation. First, Garcia presented evidence from a psychotherapist regarding cognitive decline and confusion. Second, he had been on probation for only three months and his son had been helping him fill out the log until shortly prior to the alleged violation. Third, the oral instructions were in English, and Garcia spoke Spanish. And, he did submit the log, and although it was incomplete, the probation officer did not tell Garcia about the incompleteness or inquire about it.

Martin v. State, 2D16-4468 (Dec. 9, 2020)

On remand from the Florida Supreme Court, for reconsideration in light of Love v. State, the Second District held that Martin was not entitled to a new Stand Your Ground hearing. The hearing he had was held prior to the effective date of the 2017 statutory amendment which changed the burden of proof and required that the State carry the burden of proving that an accused was not acting in self-defense.

Christian v. State, 2D19-1227 (Dec. 9, 2020)

The Second District affirmed a conviction for possession of a firearm by a convicted felon, but reversed the sentence. The trial court abused its discretion in declining to give a special instruction defining actual and constructive possession.

The requested instruction on actual and constructive possession was relevant to the sentencing enhancement under section 775.087(2)(a)1, Florida Statutes, which provides mandatory minimum sentences based upon possession. "While a finding

of either actual or constructive possession will support a conviction for possession of a firearm by a felon, case law is clear that a finding of actual possession is necessary to support imposition of the three-year mandatory minimum enhancement under section 775.087(2)(a)1. "Here, although the jury was presented with a special interrogatory asking it to determine whether Christian actually possessed the firearm, the jury was not given an instruction defining actual possession or otherwise explaining that there are two types of possession."

Third District Court of Appeal

Kirkconnell v. State, 3D20-1356 (Nov. 25, 2020)

A Rule 3.800(c) motion to modify or reduce sentence was properly denied when it was filed more than 60 days after the imposition of sentence. The 60-day time period is jurisdictional.

Bodden v. State, 3D20-1139 (Nov. 25, 2020)

The Third District denied a petition to prohibit the trial court judge from presiding over further proceedings. Bodden sought the disqualification of the judge because the judge had engaged in extensive questioning of two experts at a competency hearing, both of whose opinions aligned with those of defense counsel. Bodden further argued that the judge improperly called Bodden as a witness on the court's own motion, in an effort to discredit the experts who found Bodden incompetent.

The Third District concluded that the judge did not depart from its role as a neutral magistrate. This was based on an analysis of the nature of a competency proceeding. While parties to the case are permitted to introduce evidence beyond the competency reports, experts appointed by the court are deemed "court witnesses," and "the responsibility to determine competency rests squarely on the shoulders of the trial court." And, although the trial court interrupted counsels' questioning on several occasions, "it was not out of bounds for the trial judge to do so in order to make the hearing move along more smoothly." The Third District calculated that the court asked 26 total questions of three experts, while the parties asked a total of 149 questions. All of the judge's questions referred to the experts' reports or were "procedural" in nature.

As to the calling of the defendant as a witness, the Third District found that after the defendant had been advised of his privilege against self-incrimination, the

defendant "engaged in a limited colloquy with the trial court judge." When defense counsel told the trial court that counsel did not intend to call the defendant as a witness after the experts had testified, the judge stated that it would be helpful to hear from the defendant. Counsel advised the defendant of the privilege and "Petitioner then responded to the lower court's questions about Petitioner's ability to work with his counsel and about the medication he was taking."

Ashley v. State, 3D19-628 (Nov. 25, 2020)

The Third District reversed convictions for armed burglary and armed robbery because the judge required "Ashley's mother to take the witness stand for the sole purpose of having her invoke the Fifth Amendment in front of the jury and refuse to testify."

Ashley's first trial ended in a hung jury. Police had learned the identity of the defendant, as the perpetrator, as a result of the mother's identification of her son through video surveillance and photographic evidence of the offense. The mother did not testify. Prior to the second trial, the State indicated that it intended to call the mother as a witness. Counsel for the mother advised the court that the mother would assert the privilege against self-incrimination. The court ordered her to testify and stated that she would be held in contempt if she did not. When she still refused to testify, she was found in direct criminal contempt. The court then permitted the State to call her as a witness, even though she still indicated that she would assert the privilege. The State asserted it was doing this to establish the mother's unavailability as a witness so that the State could rely on otherwise inadmissible hearsay. When called to testify, the mother asserted the privilege against self-incrimination as to each of several questions that were posited to her.

It is improper for the State to call a witness "who is closely identified with the defendant, to testify before the jury when the State knows that the witness will invoke the Fifth Amendment right against self-incrimination and refuse to testify." Her actual testimony before the jury was deemed prejudicial as it established the inference that she did not want to provide incriminating testimony against her son. Furthermore, the State did not need to establish the unavailability of the mother as a witness. The testimony that the State sought to introduce was independently admissible as an admission of the defendant. And, the mother's statements, as part of any conversation she had with her son, would have been admissible as non-hearsay to provide context to Ashley's own statements in that conversation.

State v. Marin, 3D19-2179 (Dec. 9, 2020)

In a pretrial appeal, the Third District held that the trial court erred in excluding "the audio-video recording of a controlled call with the victim in the underlying case."

Marin was charged with aggravated battery and felony battery or domestic battery by strangulation. A detective met with the victim and conducted the controlled call. The defense sought to exclude the call on several grounds, including inaudibility. The trial court, in determining audibility, listened to the recording without the benefit of any prior transcription. The State then presented testimony from the detective, who provided an explanation of the contents of the conversation. The judge made a preliminary finding that the recording was audible, but changed that in the written order, which found that it was largely inaudible and meaningless.

The Third District found from the State's evidence at the hearing that the recording was largely audible. And, the court reporter, at the trial court hearing, transcribed what had been heard, and this corroborated the conclusion that it was largely audible. The trial court's finding of inaudibility was not supported by substantial, competent evidence.

Fourth District Court of Appeal

Morgan v. State, 4D18-1866 (Dec. 9, 2020)

Morgan, a juvenile at the time of the first-degree murder for which he was convicted, was sentenced to death in 1977, and after resulting appeals, retrials and resentencings, had his sentence reduced to life in prison, with parole eligibility; that occurred in 1994.

After the 2012 decision of Miller v. Alabama and the Florida Supreme Court's decision in Atwell v. State of 2016, Morgan was again resentenced, this time under sections 921.1401 and 921.1402, Florida Statutes. He was sentenced to life with judicial review after 25 years. On appeal, he argued that the application of section 921.1401 constituted an ex post facto violation. The Fourth District rejected that argument because Morgan affirmatively requested sentencing under this statute and waived sentencing under the statutes that were in effect at the time of the offense in 1977.

Additionally, the sentence imposed under section 921.1401, only "possibly" disadvantaged Morgan by dispensing with parole. Parole, under the previous statutory scheme, was only a possibility, not an entitlement. Application of the new sentencing scheme therefore did not create a disadvantage in comparison to the prior sentencing scheme.

Last, while the prosecutor was "immoderate in his criticism of the Supreme Court" for its decisions in juvenile sentencing cases – Miller and Graham v. Florida – that did not adversely affect the sentencing proceeding, which was before a judge, not a jury. The Fourth District noted the high level of frustration at many years of relitigation and the presumptive ability of trial court judges to disregard such comments.

El v. State, 4D19-938 (Dec. 9, 2020)

The defendant appealed convictions related to marijuana offenses. He challenged the trial court's failure to conduct an adequate genuineness inquiry into the State's race-neutral reason for a peremptory challenge. The Fourth District denied relief because the appellate record was insufficient: "Unfortunately, our appellate review is hampered by a collective failure to conclusively identify the racial make-up of the venire, prior strikes exercised against the racial group of the challenged juror, or whether the reason proffered for the strike – the juror's purported belief that marijuana should be legalized – was equally applicable to unchallenged jurors. Part of the reason for the inscrutability of the record centers around the fact that the two-member defense team frequently talked over one another, without corrective intervention by the court. Another impediment to meaningful appellate review revolves around the failure of counsel to identify, on the record, how many and which venirepersons shared or opposed the challenged juror's belief in legalization."

As a result of the foregoing, the Court used this case to serve as a "reminder that the trial court and the attorneys must always keep a keen eye on and an appreciation of the record that is being made in real time."

Hegwood v. State, 4D19-2182 (Dec. 9, 2020)

Hegwood was 17 years old at the time of the offenses for which he was convicted – three murders and one armed robbery. As a result of decisions of the Supreme Courts of the United States and Florida, regarding juvenile life sentences, Hegwood received a resentencing and was sentenced to life in prison with 25-year

minimums for the three murders, and life with a three-year minimum on the robbery; the three murder sentences ran consecutively, and the robbery sentence concurrent with the first murder sentence.

Hegwood appealed the new sentences and challenged them as unconstitutional life sentences for a juvenile. The Fourth District affirmed as to the consecutive life sentences. However, the trial court had held that under the juvenile sentencing statutes, Hegwood would not be entitled to judicial review of his sentences until the expiration of 75 years (as a result of the stacking of the three life sentences for the murders). The Fourth District found that that was improper. "The plain meaning of section 921.1402 dictates that Hegwood is entitled to a review of each consecutive life sentence after twenty-five years of that sentence." Thus, since Hegwood had now served 32 years on the first of the murder life sentences, he was entitled to judicial review of that life sentence at this time."

Garcia v. State, 4D19-2208 (Dec. 9, 202)

The Fourth District affirmed Garcia's revocation of probation and sentences imposed after probation revocation.

Challenges to the sufficiency of evidence for two of the alleged violations of probation were academic, because a third violation found by the trial court was not challenged, and it was clear that the trial court would have revoked probation on the basis of the single unchallenged violation. The trial court was required to revoke probation on that third violation "after finding that [the defendant] posed a danger to the community pursuant to the VFOSC statute's requirements."

Alleged errors regarding Garcia's Criminal Punishment Code scoresheet were irrelevant because Garcia was sentenced as an habitual felony offender and HFO sentencing is not subject to the CPC.

Fain v. State, 4D19-3138 (Dec. 9, 2020)

Fain, a juvenile at the time of the offenses he committed, received a new sentencing hearing based on Miller v. Alabama and Graham v. Florida. On appeal from the new sentence, the Fourth District reversed for another sentencing hearing, because the trial court committed fundamental error in sentencing Fain without a sentencing scoresheet and erred in setting the date for judicial review.

The convictions for which Fain was being resentenced were attempted first-degree murder with a firearm, while wearing a mask, and robbery with a firearm while wearing a mask. At the resentencing proceeding, the trial court made the finding that Fain's conduct reflected youthful, transient immaturity, as opposed to irreparable corruption. Without a scoresheet, Fain was then sentenced to 30 years in prison, followed by 10 years of probation, on the attempted murder, and 45 years in prison, plus 10 year of probation, on the armed robbery. Both were imposed concurrently. Mandatory minimums of 25 years were imposed for each conviction. The trial court also imposed judicial review after 25 years on each count, based on the juvenile sentencing statutes.

The absence of the guidelines scoresheet constituted fundamental error, requiring a new sentencing hearing. And, for the armed robbery, the statutory period for judicial review was 20 years, not 25. Robbery with a firearm while wearing a mask is a nonhomicide offense and a felony of the first-degree punishable by a term of years not exceeding life.

Walker v. State, 4D19-3289 (Dec. 9, 2020)

The Fourth District affirmed convictions for first-degree murder with a firearm while wearing a mask, and six robberies with a firearm while wearing a mask.

Walker challenged the admissibility of a detective's testimony under the Daubert standards. "The trial court found that the detective could testify as to the cell site mapping in this case even without having knowledge of the underlying algorithms, or how the system works in every technical detail, to generate the output of information."

"Regardless of whether the detective's testimony in this case is viewed as non-expert or expert testimony, the trial court got it right." Two prior Florida appellate court decisions, both of which were opinions preceding Florida's adoption of the Daubert standards, had concluded that such testimony was non-expert testimony, which would not be subject to any requirements for expert testimony. As far as satisfying Daubert, the Fourth District emphasized the large number of cases involving cell site mapping that the detective had been involved in, training for over 100 hours, and testifying in more than 10 cases involving cell site mapping with the Palm Beach County program. The testimony was that the program diagrams estimated locations for the mobile device, not exact locations. An expert is not

required to have in-depth knowledge of "'all the algorithms underlying their technological tools.'"

As to the accuracy of the program, the detective testified "that he participated in drive testing or field scan tests, that he had done such tests as recently as two to three months before trial, and that the technology was 'extremely accurate.' Although he did not know the error rate, his testimony clearly included other indicia of reliability."

Free v. State, 4D19-3626 (Dec. 9, 2020)

Although the trial court made an oral determination of competency, it failed to reduce that order to writing, and was directed to do so on remand. The trial court also reversed the amounts that should have been entered for the Public Defender's fee and for court costs, and was directed to correct those on remand.

Hollis v. State, 4D20-1864 (Dec. 9, 2020)

The Fourth District denied a petition alleging ineffective assistance of appellate counsel as untimely. Hollis argued that an exception should apply because of similar circumstances in other appellate court opinions.

Hollis and his codefendant were both convicted for armed robbery, armed burglary, and false imprisonment. In 2004, Hollis's conviction and sentences were affirmed without written opinion. While that appeal was pending, the codefendant's appeal resulted in a reversal of the conviction for false imprisonment, due to insufficient evidence for that offense. Hollis's appellate counsel on direct appeal did not raise that issue.

In 2006, Hollis was granted an extension of time, until March 2007, in which to file the petition alleging ineffective assistance of appellate counsel. He did not file that petition until 2020. In the intervening years, he did file mandamus petitions to compel former appellate counsel to provide him with the records from the direct appeal.

The Fourth District rejected Hollis's arguments based on the existence of a manifest injustice. First, the petition was not filed within four years of the finality of the convictions and sentences. The outer limits for such petitions under the appellate rules, even with an exception to the general two-year limit, is four years. Hollis waited more than a decade after the conclusion of the codefendant's

successful appeal. And, Hollis had served all of the time on the false imprisonment conviction, and vacating the conviction would not affect the time to be served on the sentences for the other offenses.

Fifth District Court of Appeal

Mohammed v. State, 5D19-1341 (Dec. 11, 2020)

Mohammed appealed a conviction for attempted second-degree murder. The jury found that he discharged a firearm and caused great bodily harm to the victim. The victim is the defendant's two-year old daughter; the defense was that the shooting was accidental. The Fifth District affirmed.

The jury was given the standard instruction for attempted second-degree murder. The court did not read the "Introduction to Attempted Homicide," which defines justifiable and excusable homicide. The defendant did not request that introductory instruction and did not object to its omission.

To determine whether the failure to give the instruction constituted fundamental error, the Fifth District applied the test set forth in the Florida Supreme Court's recent decision in Knight v. State, 286 So. 3d 147 (Fla. 2019), where the Court held that fundamental error does not exist where "there was no error in the instruction for the offense of conviction and there is no claim that the evidence at trial was insufficient to support that conviction."

Applying that test, the Fifth District concluded that the Introduction to Attempted Homicide was "not an element, but is instead in the nature of a defense for purposes of an attempted second-degree murder charge." As such, it did not affect the sufficiency of the instruction for the charged offense.

The defendant further argued that the instruction should have been given because there was evidence to support it. That did not affect the Court's conclusion, as it applied prior case law from the Florida Supreme Court, Sochor v. State, for the principle that "a failure to issue an unrequested defense instruction is not fundamental error."

One judge wrote a special concurrence, stating that the Fifth District's prior decision in Blandon v. State, 657 So. 2d 1198 (Fla. 5th DCA 1995), was no longer valid in light of Knight.

Grosvenor v. State, 5D20-1013 (Dec. 11, 2020)

Grosvenor argued, in a Rule 3.800(a) motion to correct illegal sentence, that the 50-year sentence imposed for attempted first-degree murder of a law enforcement officer with a firearm exceeded the statutory maximum for that offense. The Fifth District agreed, and reversed the lower court's order, in part.

The offense was committed in 1989 and was governed by the statutes in effect at that time. The offense of attempted first-degree murder was a first-degree felony – attempts to commit capital offenses are first-degree felonies, not life felonies. The firearm resulted in the reclassification of the offense up to a life felony. Under the 1989 statutes, a life felony was punishable by life in prison, or a term of years not exceeding 40 years. The 50-year sentence was therefore illegal, even though Grosvenor agreed to it as part of a plea agreement.