Case Law Update
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First District Court of Appeal

Morales v. State, 1D19-4016 (Dec. 18, 2020)

Morales appealed the denial of a Rule 3.850 motion. The First District addressed two of the multiple claims and reversed as to one claim, remanding for an evidentiary hearing, while affirming as to other claims.

The trial court conducted an evidentiary hearing on a claim of ineffective assistance of trial counsel for failing to adequately prepare Morales regarding the decision of whether to testify at trial. He alleged that he did not testify because counsel erroneously advised him that the nature of his prior convictions, not just their number, could be introduced by the State to impeach him if he testified. At the evidentiary hearing, trial counsel testified that she did not have a specific recollection of the conversation with the defendant, but that she was highly experienced and always gave proper advice to clients regarding this. The First District concurred with the trial court's conclusion and denied relief on this claim: "We agree with the Fourth District and hold that the trial court may disbelieve the defendant's testimony and may consider a trial attorney's general practice as evidence when making a factual finding about specific conversations between the attorney and the client." Additionally, in this case, trial counsel had notes indicating that the defendant did not want to testify.

In a separate claim, Morales alleged that trial counsel was ineffective for calling a witness who would have provided him an alibi. This claim was denied by the trial court without an evidentiary hearing, based solely on the colloquy of the defendant at trial, in which counsel stated that there no witnesses would be called, and the defendant expressed his agreement with that decision. That was an inadequate basis for the summary denial of the claim because Morales alleged that the reason that he concurred with counsel's decision was attributable to counsel's failure to perform an investigation as to this potential witness. The case was therefore remanded to the trial court for further proceedings on this claim.

McClain v. State, 1D19-4590 (Dec. 18, 2020)

The First District reiterated its holding from Owens v. State, 303 So. 3d 993 (Fla. 1st DCA 2020), "that whether section 948.06(2), Florida Statutes (2019), applies to a defendant who committed an offense before the statute was amended, when imposing sentence for a violation of probation, a trial court is limited under section 948.06(2)(f)1., to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant 'meet[s] all four condition of section 948.06(2)(f)1.'"

Mutch v. State, 1D19-4392 (Dec. 18, 2020)

Mutch appealed a conviction for aggravated manslaughter of a child by culpable negligence. The First District affirmed.

Mutch argued that the trial court erred in permitting the medical examiner "to testify that the injuries resulted from 'blows,' because the State did not charge Appellant with intentionally causing the injuries." The First District noted that Mutch was not challenging the sufficiency of the evidence. The Court further noted that even though the greater offense of second-degree murder was not charged, the evidence of the blows inflicted was sufficient as to that greater offense, even though the State was not required to prove the greatest degree of criminal culpability "to render the medical examiner's testimony relevant."

No one witnessed how the injuries were inflicted, and "both parties could argue that the injuries to the child which occurred while Appellant had sole custody of the child were either accidental or the result of culpable negligence." "The medical examiner's testimony was relevant to prove that the fatal injuries could not have been caused in an accident that did not involve criminal conduct, whether by intentional blows or some other type of force." "The State's charging decision did not render the evidence at issue inadmissible."

Second District Court of Appeal

Bailey v. State, 2D20-171 (Dec. 18, 2020)

Bailey appealed the summary denial of a Rule 3.850 motion and the Second District reversed for further proceedings because the claims were facially sufficient and were not conclusively refuted by record attachments.

Bailey pled guilty to offenses in Pasco County; the agreement called for his sentences to run concurrently with any sentences in Pinellas County. Afterwards, convictions and sentences were imposed in Pinellas County, but the sentences did not specify whether they were concurrent or consecutive to the Pasco County sentences, which, under Florida law, means that they are consecutive. That is how the Department of Corrections treated them. Bailey then challenged the Pasco County sentences as 1) violating his plea agreement, and 2) being inconsistent with the court's oral pronouncement.

"The postconviction court failed to recognize Bailey's facially sufficient claims that he did not receive the sentence for which he bargained or that was orally pronounced because his written sentence could be interpreted in a manner that was inconsistent with the allegedly bargained-for sentence and the trial court's oral pronouncement. . . . Accordingly, we must remand for further proceedings before the postconviction court."

Drossos v. State, 2D17-280 (Dec. 16, 2020)

On remand from the Florida Supreme Court, in the aftermath of that Court's decision in Love v. State, in which the Court held that the statutory amendment to the burden of proof for stand your ground claims applied to hearings held after the effective date of the statute, Drossos argued he should get a new immunity hearing.

The Supreme Court's decision in Love came out while Drossos' direct appeal of his conviction was pending in the Second District. On remand from the Florida Supreme Court, Drossos argued that "'prior to the ruling in Betherick [v. State] the State would have been required to carry the burden based on the rules of statutory construction, and the application of the rule of lenity.' Because Drossos's immunity hearing occurred *after* Bretherick was decided, he argues that there was 'a burden shift while his case was pending' and that he should benefit from application of 'the law as it existed at the time of his alleged offense.'"

This was not a claim based on Love, and it should have been raised when the direct appeal was pending. It was therefore beyond the scope of the remand from the Florida Supreme Court.

Justice v. State, 2D19-4874 (Dec. 16, 2020)

Justice entered into a plea agreement with the State. He was charged with misdemeanor battery and possession of a controlled substance, a felony. Under the

agreement, the State would dismiss the battery and adjudication would be withheld on the possession charge. The judge, however, believed that Justice was not entitled to a withheld adjudication because he had previously been charged with or convicted of two prior felonies. Defense counsel objected, but ultimately acquiesced to the court's conclusion.

On appeal, based upon a review of the relevant statutory language, in section 775.08435, Florida Statutes, the Second District held that the trial court erred. The determination of whether there is an entitlement to withheld adjudication hinges on the existence of two or more prior withheld adjudications, not on the number of prior convictions or charges.

Third District Court of Appeal

Walker v. State, 3D20-1562 (Dec. 16, 2020)

Walker appealed the denial of a Rule 3.800(c) motion to reduce or modify sentence. The trial court denied the motion as it was untimely; it was filed more than 60 days after imposition of sentence. Such orders are not appealable and the Third District therefore treated the appeal as a petition for writ of certiorari. Such review was limited to the issue of the timeliness of the motion. As the motion was untimely, the petition was denied.

Fourth District Court of Appeal

Holland v. State, 4D19-1365 (Dec. 16, 2020)

The Fourth District affirmed a conviction for first-degree murder and addressed only the claim that the trial court failed to conduct a Nelson hearing.

At the sentencing hearing, the defendant engaged in a lengthy complaint about trial counsel – referring to the waiver of a speedy trial, the failure to call witnesses, the existence of house arrest, the failure to provide the defendant discovery, the failure to engage in cross-examination, and other matters. The judge responded that the court's recollection was entirely different and that counsel did her very best, and an excellent job on cross-examination.

With respect to the Nelson hearing claim, even assuming that the defendant's lengthy complaint constituted an unequivocal statement that he wished to discharge counsel, the statement came at the end of the sentencing hearing and referenced

conduct from the guilt-phase of the trial. Nelson hearings are "designed as a prophylactic measure and because the alleged ineffectiveness did not arise from defense counsel's *current* representation, Appellant's statement was untimely and warranted neither a *Nelson* inquiry nor a full hearing."

As to the related claim of ineffective assistance of trial counsel, any ineffectiveness of counsel was not clear on the face of the record. As such, the claim was not cognizable in a direct appeal. The affirmance of the conviction and sentence was without prejudice to raise a claim of ineffective assistance of trial counsel in a postconviction Rule 3.850 motion.

Sanders v. State, 4D19-1974 (Dec. 16, 2020)

The Fourth District affirmed a conviction for first-degree murder. Sanders challenged his exclusion from a bench conference during trial and argued that counsel's statements during that bench conference triggered the need for an inquiry regarding a conflict of interest.

The defendant took the stand on his own behalf and denied being the shooter in the charged offense. After questioning the defendant and eliciting the defense, counsel asked if the defendant had anything else to add. When the defendant engaged in a lengthy narrative, the State objected and the court conducted the bench conference at issue. Defense counsel indicated that the open-ended question was because a point had been reached were counsel had to proceed in that manner "because I don't want to get put in a bind about asking questions." Upon inquiry of the State, defense counsel denied saying that counsel was worried that the defendant would commit perjury. The court sustained the objection to testifying in a narrative format. The defendant remained on the witness stand while this transpired.

There was no error in excluding the defendant from the bench conference because it was not a critical stage of the proceedings. It addressed only the format of the question that could be presented to the defendant and the defendant's presence was not required. Furthermore, the conference did not give rise to any suspected conflict of interest. Counsel denied saying tat counsel was concerned about perjury by the defendant.

Hart v. State, 4D19-2483 (Dec. 16, 2020)

Hart appealed a conviction for aggravated battery following a retrial. Hart argued that he was entitled to a new stand your ground hearing because his renewed

motion to dismiss was pending after the effective date of the statutory amendment to the burden of proof for SYG hearings. The Fourth District disagreed and affirmed, but certified conflict with a decision from the Second District Court of Appeal.

The first trial and conviction resulted in a reversal on direct appeal in 2018. Prior to the second trial, Hart filed an amended motion to dismiss on the basis of the SYG statute. The amended motion sought to obtain the benefit of the statute amending the burden of proof, which became effective in June 2017. The trial court denied the amended motion and refused to reconsider its prior ruling.

The Fourth District held that the State, at trial, proved the defendant's guilt beyond a reasonable doubt, and, "[i]n so doing, the State overcame a burden greater than clear and convincing evidence, and the defendant's self-defense claim was defeated." The Second District, in Nelson v. State, 295 So. 3d 307 (Fla. 2d DCA 2020), held that even after a conviction at trial, based on proof beyond a reasonable doubt, a defendant, on appeal could obtain a new stand your ground immunity hearing if the pretrial hearing failed to apply the correct burden of proof.

Barrios v. State, 4D19-2569 (Dec. 16, 2020)

Barrios appealed convictions for first-degree murder and aggravated assault with a deadly weapon. The Fourth District's opinion addressed the argument "that the trial court erred in failing to properly address the alleged spoliation of evidence which impacted Appellant's argument of self-defense."

The facts of the case involved a gun that misfired, with a bullet stuck in the gun. After the gun misfired, the defendant asserted that the victim, his then-wife, who had accused him of engaging in sex with her daughters, tried to stab him with a knife, at which time he got out a sledgehammer and killed the victim. He argued that an officer mishandled the firearm, by wearing the same gloves when removing the jammed bulled, as when he handled the magazine and exterior of the gun. The claim related to the transferring of the victim's DNA, giving the State an explanation for her DNA on the magazine and bullet.

"Here, there could be no finding that any evidence was destroyed because there was no evidence to support Appellant's contention that the firearm had been contaminated. The State did not assert that the gloves *had* transferred DNA from the outside of the firearm to the inside – it merely recognized that this was one possible theory to explain the presence of the victim's DNA inside the gun. The detective who handled the firearm testified that he followed protocol in clearing the

gun before removal, and that he used a clean set of gloves to disassemble the gun to make it safe for transport. . . ." Additionally, the State did not "challenge Appellant's contention that both the victim and Appellant touched the firearm." "In fact, the State argued that the victim's blood and DNA were all over the exterior *and* interior of the gun because of the struggle. It was left to the jury to sort out whether the victim was the aggressor in this struggle."

State v. Charlton, 4D20-276 (Dec. 16, 2020)

The State appealed an order withholding adjudication on a third-degree felony. The Fourth District agreed that the trial court impermissibly withheld adjudication.

Under section 775.08435(1)(d), "no adjudication of guilt shall be withheld for a third degree felony offense if the defendant has two or more prior withholdings of adjudication for a felony that did not arise from the same transaction as the current felony offense." "Here, Defendant received four withholds as a part of a previous transaction. Because the amount of prior withholds was at least two, and those withholds occurred in a previous transaction, the statutory maximum has been exceeded, making Defendant ineligible for any further withholding of adjudications even if exceptions (1)(d)1. Or (1)(d)2. Could apply." "Defendant interprets the 'same transaction' language within the concluding provision such that all withholds in a previous case would constitute a single withhold. However, the proviso speaks to the relationship between the current felony and the previous felony offense ,not between the number of felony offenses arising out of the same transaction or incident."

"In other words, the four withholds here as a part of the same transaction would be permitted if a part of the first and only transaction, but the four withholds in the first transaction prohibit any further withholding of adjudication in the second transaction. In sum, the statute prescribes a limit of two withholds in the aggregate unless those withholds are a part of the first and only transaction."

Fifth District Court of Appeal

Archer v. State, 5D19-3627 (Dec. 18, 2020)

As part of Archer's sentence for felony cruelty to animals, special conditions of probation were imposed, including a bar against owning animals or residing with

anyone who owns animals. Archer challenged the imposition of several of the conditions.

There was evidence in the record that Archer consumed alcohol on the night of the incident and that alcohol was a factor. As a result, the trial court did not abuse its discretion in imposing the drug offender-related special conditions, such as the prohibition against the use of alcohol and all legal drugs, and the participation in periodic urinalysis.

Although recent legislation, known as Ponce's law, has not been developed regarding restrictions on animal ownership or access, under the facts of the instant case, which included the defendant beating and stabbing his dog to death after the dog made a mess in his residence, there was "nothing unreasonable about restricting an animal abuser's access to animals."

With respect to a lifetime ban on animal ownership, although section 828.12(6) authorized such a prohibition for a time period to be determined by the court, the Fifth District construed the statute as being limited by the general rule that conditions of probation are limited to the maximum statutory term that can be imposed which, in this case, was five years for a third-degree felony.

One judge partially dissented and would have upheld the lifetime prohibition against animal ownership, finding the issue to have been unpreserved for review. And, the judge construed the record as evincing the defendant's agreement to the condition.

Sanchez v. State, 5D19-3774 (Dec. 18, 2020)

An appeal from a sentence after a guilty plea was dismissed due to a lack of jurisdiction because Sanchez failed to file a motion to withdraw the plea. The dismissal was without prejudice to the right to raise claims through proper postconviction motions.

Joseph v. State, 5D20-1627 (Dec. 18, 2020)

Joseph appealed from the denial of a Rule 3.800(a) motion to correct illegal sentence. The Fifth District affirmed and addressed the issue of "whether Joseph's claim required utilization of the 'could-have-been-imposed' test, as opposed to the 'would-have-been-imposed' test, regarding an entitlement to resentencing with a corrected scoresheet."

The motion challenged the scoring of offenses other than the one that Joseph was being sentenced for. When a conviction has been vacated and resentencing is needed, the "would-have-been-imposed" standard is utilized. However, when a challenge arises in a Rule 3.800(a) motion, and affects only the possible sentence, the "could-have-been-imposed" standard is applicable.