Case Law Update
February 1, 2021
Prepared by
Richard L. Polin

Supreme Court of Florida

Casiano v. State, SC19-1622 (Jan. 28, 2021)

Reviewing a conflict between the Fourth and Fifth District Courts of Appeal, the Supreme Court addressed the issue of whether "a defendant's completion of sentence during the pendency of his [direct] appeal renders moot his challenge to a state prison sentence erroneously imposed pursuant to a trial court's dangerousness finding under section 775.082(9)(a)1." The Court held that "a defendant's potential designation as a prison releasee reoffender under section 775.082(9)(a)1. is not a sufficient collateral legal consequence to preclude dismissal of the appeal as moot."

The record did not reflect that Casiano was facing potential sentencing as a PRR as a result of the commission of any enumerated offense after the one for which his appeal was pending. Therefore, the PRR designation, even if erroneous, had no actual effect on Casiano.

Eleventh Circuit Court of Appeals

Garcia v. United States, 19-14374 (Jan. 26, 2021)

The Eleventh Circuit vacated its previous opinion of January 8, 2021, pending a decision by the Supreme Court in Granda v. United States, 17-15194 or Foster v United States, 19-14771. The prior Garcia opinion addressed whether Hobbs Act robbery constituted a violent felony under the Armed Career Criminals Act when raised in a motion to vacate sentence under 28 U.S.C. s. 2255. The January 8th opinion of the Eleventh Circuit was discussed in the January 11, 2021 issue of the Case Law Update.

First District Court of Appeal

Himes v. State, 1D19-2432 (Jan. 29, 2021)

The summary denial of a Rule 3.850 motion alleging newly discovered evidence was reversed because the trial court failed to provide Himes with an

opportunity to amend the motion. The motion was supported by a signed affidavit, but the notarization did not reflect that the affidavit was made under the penalty of perjury. Nor did the notary indicate how the affiant was known to her.

The trial court made an alternative ruling that the content of the affidavit was inherently incredible because the affiant, who was making incriminating statements as to himself, was doing so after the statute of limitations for the offense had expired, as well as because of the absence of a proper oath, and because of the weight of the evidence at trial. The passage of time alone does not make the affidavit inherently incredible. Nor should the manner of execution of the affidavit have precluded leave to amend. And, as to the weight of the evidence at trial, it appears that the trial court was referring to contradictions between the affidavit supporting the Rule 3.850 motion and the trial evidence, and such a contradiction does not, in and of itself, support the summary denial of a motion.

Hathaway v. State, 1D20-202, 1D20-209 (Jan. 28, 2021)

The First District affirmed multiple convictions and sentences and rejected challenges to the sufficiency of evidence. Hathaway appealed convictions for second-degree murder, burglary, kidnapping and robbery. He argued that the State failed to demonstrate that he participated in the offenses.

The key evidence that the First District relied on was that "contrary to what [Hathaway] claimed during his police interview, [he] was not only on the victim's property near the time when the crimes occurred, but he was later seen with the victim's equipment. Moreover, the same brand of metal strapping used to bind the victim was found near where Appellant's 'selfie' was taken on the victim's property and in Appellant's home." Other evidence included testimony about a girl's bicycle that had been found at the victim's property, which bicycle a witness had observed Hathaway riding that weekend. DNA evidence reflected that Hathaway was a possible contributor to the profile on the bicycle. Two jars of coins were missing from the victim's home, and Hathaway had been seen with a plastic container full of coins and Hathaway had cashed $25 worth of coins at a Walmart.

Powell v. State, 1D20-820 (Jan. 27, 2021)

The First District affirmed the convictions on appeal without setting forth any facts, but relied on the Court's prior holding that "[d]irect evidence of intent is rare, and intent is usually proven through inference," and a trial court should therefore "rarely" grant a motion for judgment of acquittal on the question of intent.

Second District Court of Appeal

Peters v. State, 2D19-3550 (Jan. 29, 2021)

The Second District affirmed the denial of a Rule 3.800(a) motion to correct sentence.

Peters original sentence in 1994 was three concurrent terms of 30 years in prison as an habitual felony offender. The last ten years of each were suspended upon successful completion of ten years of probation. Peters obtained conditional release from prison in 2007 and his terms of probation started at the same time. His probation was revoked in 2012 and he was sentenced to concurrent terms of eight years in prison.

Peters argued "that his eight-year sentences are illegal because the trial court did not designate whether those sentences would be served concurrently with or consecutively to any incarceration that would result if the DOC chose to forfeit the previously earned gain-time that had permitted his conditional release." He further alleged that DOC did forfeit that gain-time and decided that his eight-year sentences would be served consecutively to the forfeited gain-time.

Peters relied on case law involving unauthorized deference to DOC to determine sentence structure. The Second District distinguished those cases and concluded: "That the DOC awarded, and then revoked, community release as an incentive for positive behavior during the incarcerative portion does not alter the structure of the 1994 sentences, and it did not confer upon the 2012 sentencing court the discretion to alter that structure."

Brown v. State, 2D20-193 (Jan. 29, 2021)

The trial court erred in denying a motion to suppress evidence. At the evidentiary hearing, the State presented surveillance video evidence and testimony from a detective who "was able to testify to his observations of Brown during his surveillance in the park, but he was unable to testify regarding the stop of Brown, which was made by another officer after Brown left the park. The State argued that the police had reasonable suspicion to stop Brown and that Brown was not arrested."

The Second District stated: "At the hearing, the State did not present any evidence regarding what happened during the stop, did not argue that there was

probable cause to arrest and search (and in fact argued that there was no arrest), and did not otherwise address the search that resulted in the discovery of the drugs. Thus, the State did not demonstrate that the police had probable cause to arrest Brown or any other basis to justify a search of Brown or his personal belongings."

Fourth District Court of Appeal

Tindall v. State, 4D19-2215 (Jan. 27, 2021)

At a resentencing proceeding, the defendant was sentenced to life for offenses committed while he was a juvenile. The Fourth District reversed for a further resentencing. When pronouncing sentence, "the trial court erred in relying upon its own opinion of Defendant's mental state in the face of contradictory expert opinion."

One defense expert testified that she did not find any mental health disorders or the typical behavior associated with an increased risk of recidivism. She also testified that most adolescent males who commit sex offenses do not go on to commit further sex offenses. The second expert found that the defendant exhibited a level of behavioral stability, as evidenced by the GED he obtained while in prison. A third expert also testified to the absence of any diagnosable disorder. The State did not present any expert witnesses.

The trial court, after hearing the evidence, elaborated upon relevant sentencing factors when imposing a sentence on a juvenile under the 2014 juvenile sentencing statutes. The court "believe[d] he suffers from an urge to molest little girls." As to the nature of the offenses, the court asserted its "opinion that they reflect an ingrained, immutable propensity to commit pedophiliac crimes." The experts' opinions to the contrary "are at odds with common sense inferences driving from the acts of the defendant which the court deems to be competent, substantial evidence." The expert testimony about the absence of any disorder was "patently unreliable in this case. Normal people without sexual disorders, do not rape little girls."

The trial court's opinions as to these factors were not supported by any evidence and were contradicted by the only evidence adduced at the sentencing hearing. And, the defense experts' conclusions were not "so palpably incredible, illogical, and unreasonable as to be untrustworthy of belief or otherwise open to doubt." Given "the trial court's express position that it cannot accept the expert evidence in this case, the case is remanded for resentencing before a different judge."

Fifth District Court of Appeal

Boswell v. State, 5D19-2890, 5D19-2900 (Jan. 29, 2021)

The trial court erred by revoking probation and terminating participation in drug court on the basis of an "abbreviated" hearing as opposed to a "full" hearing. The Fifth District agreed with the State's confession of error, and the opinion does not provide facts detailing the abbreviated nature of the proceeding.

State v. Decker, 5D20-831 (Jan. 29, 2021)

Five years after a no contest plea to a misdemeanor as a lesser included offense of the originally charged felony, Decker filed a Rule 3.850 motion, alleging that counsel was ineffective for having provided misadvice regarding the ability to seal her criminal record. The trial court granted the motion and the Fifth District reversed because Decker admitted that she did not engage in due diligence "on her ability to seal her criminal record during the two years after her judgment and sentence became final."

After the trial court granted her motion to seal the record, as to which the State did not object, FDLE advised her that her offense was statutorily ineligible for sealing because it qualified as an act of domestic violence. After FDLE responded to her, and after the expiration of the two-year limitations period for a Rule 3.850 motion, Decker filed her motion alleging counsel's ineffectiveness for having told her that she would be able to seal the record.

"Decker could have investigated the sealing of her criminal record after the imposition of her sentence and quickly learned that she was statutorily ineligible." By waiting three years until after the finality of the judgment and sentence, she failed to exercise due diligence and the Rule 3.850 motion was untimely, as it was based on factual allegations that could have been ascertained within the original two-year limitations period.

Barton v. State, 5D21-168 (Jan. 26, 2021)

The Fifth District granted a petition for writ of habeas corpus, agreeing with the State's concession that Barton was entitled to pretrial release on the basis of a reasonable bond or other appropriate conditions of release.

Barton was first arrested on a misdemeanor in Citrus County and was released on bond. While on release, he was arrested in Marion County on felony drug charges. "'When a defendant commits a new offense while out on bond, the trial court can, sua sponte, revoke the bond in the earlier case.'" The trial court erred, however, by refusing bond in the subsequent Marion County case simply because Barton was on pretrial release when allegedly committing the new offenses in Marion County.