

Case Law Update
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First District Court of Appeal

[Seale v. State](#), 1D20-1622 (Feb. 18, 2021)

In a post-conviction motion, Seale argued that his sentence, which included a provision for sex offender probation, was illegal, because the crime for which he was sentenced, aggravated stalking, did not qualify for sex offender probation. “Because Appellant agreed to the sentence he received [as part of a plea agreement], the sentence is not illegal.”

[Mims v. State](#), 1D20-2514 (Feb. 18, 2021)

In a Rule 3.800(a) motion, Mims argued that his 20-year prison sentence was illegal because “the law did not allow him to be convicted of armed robbery with a firearm where the jury did not find that he actually possessed a firearm and the evidence did not demonstrate that he actually possessed a firearm.” The First District affirmed.

A conviction for armed robbery may be based on either actual or constructive possession of a firearm, and the conviction for armed robbery as a principal was legal. The sentence was legal because armed robbery is a first-degree felony punishable by a term of years not exceeding life.

Second District Court of Appeal

[Nichols v. State](#), 2D19-1721 (Feb. 19, 2021)

The Court granted a motion for rehearing and issued a new opinion. Nichols was convicted for multiple offenses, including three counts of illegal killing, possessing, or capturing alligators, crocodiles or eggs. The Second District reversed those three convictions because the jury instructions given were “incomplete, misleading, and confusing.”

The prosecution was based upon a combination of statutory provisions and provisions of the Florida Administrative Code promulgated by the Florida Fish and

Wildlife Conservation Commission. The jury instructions, after extensive argument by the parties, included the text of the Administrative Code provisions, but “did not include any explanation of how the jurors were to consider or apply those provisions.” The statutory offense included language that an the offense existed “unless authorized” by Commission rules. The instructions failed to include the “unless authorized” language, thereby leading the jury to believe that “any” killing was an offense, regardless of whether it was authorized by the Commission’s rules. Furthermore, simply reading pages of Commission rules “without offering an explanation as to whether those provisions constituted a potential defense” rendered the instructions as given “patently confusing.”

[D.A.W. v. State](#), 2D20-64 (Feb. 19, 2021)

The Second District reversed the imposition of a public defender’s lien because it was imposed without notice of the right to contest the lien. As the Court did in an previous decision, it certified conflict with decisions of the First and Fourth Districts to the Supreme Court.

Third District Court of Appeal

[Baxter v. State](#), 3D18-1246 (Feb. 17, 2021)

On a motion for clarification, the Third District revised its prior opinion and affirmed a conviction for second-degree murder with a deadly weapon.

The Court first found that there was substantial, competent evidence as to the depraved-mind element of second-degree murder:

We find, however, that the State presented substantial, competent evidence in the form of eye-witness testimony, photos, a cell phone camera video and video surveillance from which the jury could find the depraved mind element. The evidence presented to the jury showed that Baxter initially confronted and corralled Meriweather and then ran to his truck to retrieve a gun, loaded it with ammunition, chased Meriweather down and shot him multiple times in the back.

A claim that counsel was ineffective for failing to move for a reduction of the charge to manslaughter as a matter of law was beyond the scope of arguments that

could be presented on direct appeal, as a claim of ineffective assistance is viable on direct appeal only if it is obvious on the face of the record, which this was not. This claim was denied without prejudice to raise it in a post-conviction Rule 3.850 motion.

[Thorson v. State](#), 3D20-1581 (Feb. 19, 2021)

A habeas corpus petition, challenging a conviction and sentence from the 12th judicial circuit, was filed in the 11th judicial circuit. Only the judicial circuit which imposed the conviction and sentence has jurisdiction over post-conviction challenges and neither the Eleventh Circuit nor the Third District had jurisdiction to rule on the merits of the petition. The 11th circuit's order was affirmed without prejudice to the filing of a post-conviction motion in the 12th judicial circuit.

[V.L.H. v. State](#), 3D20-1858 (Feb. 19, 2021)

The Third District affirmed an order revoking probation, but reversed and remanded for a new disposition proceeding.

The State conceded that one of multiple grounds of the alleged violations of probation was improperly found, but the Third District affirmed the revocation of probation because it was clear that the trial court would still have revoked probation based on the other violations. One of the alleged violations was for failing to meet with the probation officer. While the probation officer testified that regular meetings were required and scheduled, the officer did not testify as to any violations of this condition; it was stricken from the order revoking probation.

The trial court erred by entering the disposition order upon revocation of probation without first obtaining a new predisposition report from the Department of Juvenile Justice. The Third District rejected the State's argument that a new predisposition report was required after a violation of probation when one had been done as part of the original disposition proceedings, when the juvenile was first placed on probation. The Court read several statutory provisions from Chapter 985 in para materia, to support its conclusion that a new report was required prior to the disposition upon revocation of probation.

Fourth District Court of Appeal

[Prentice v. State](#), 4D19-3498 (Feb. 17, 2021)

The Fourth District addressed multiple sentencing errors on direct appeal.

For convictions for lewd and lascivious molestation, Prentice received concurrent sentences of life in prison with 25-year mandatory minimums. Under the relevant statutes, Prentice could have received either a life sentence or a split sentence with a minimum of 25 years in prison, with the remainder of his life on probation. The Fourth District concluded from the trial court record that the lower court intended to impose the life sentence and there was no need for any further sentencing proceeding on remand; the 25-year mandatory minimums were stricken.

A public defender's lien for an amount in excess of that to which the defendant agreed in his plea was reversed as he was not provided prior notice of the right to contest the assessment. On remand, the court was permitted to either reduce the amount to \$500, or conduct an evidentiary hearing to provide support for a greater amount.