

Case Law Update
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Eleventh Circuit Court of Appeals

[United States v. Harris](#), 20-12023 (Mar. 2, 2021)

The Court withdrew its prior opinion and issued a new opinion, affirming the denial of a motion for compassionate release under 18 U.S.C. s. 3582(c)(1)(A). The motion was based on Harris’s medical conditions, which allegedly put her “at an increased risk of contracting COVID-19.” As a preliminary matter, the Court held that the exhaustion requirement of that statute is not jurisdictional and that the appellate court had jurisdiction notwithstanding the possibility that Harris had not exhausted all administrative remedies.

On the merits of the appeal, the Court noted that the statute says that the district court “‘may’ reduce a defendant’s sentence after certain findings and considerations,” and the decision is therefore discretionary and reviewed only for an abuse of discretion. Compassionate release may be granted if “extraordinary and compelling reasons warrant” it.

Only one of the multiple medical conditions referenced by Harris, hypertension, was on the CDC’s list of conditions that “might” render adults subject to increased risk for severe illness from COVID-19. This was distinguished from other conditions that the CDC concluded to have an actual correlation to “increased risk.”

Second District Court of Appeal

[In re Commitment of Raymond Drake](#), 2D19-2285 (Mar. 3, 2021)

After Drake was civilly committed as a sexually violent predator, he had several annual reviews, and he challenged the court’s finding from the 2019 annual review proceeding. The trial court “determined that there was not probable cause to believe that Drake’s condition as a sexually violent predator had so changed that it was now safe for him to be at large.” The Second District disagreed and reversed.

Drake “presented two expert witnesses who both testified that due to his age – he was born in 1950 – and his diagnosis with stage 4 chronic obstructive pulmonary disease,” he “is no longer physically able or mentally likely to commit a sexually violent crime.” The Second District reversed and remanded for a full trial on the issue of whether Drake’s condition had sufficiently changed so as to warrant release.

Third District Court of Appeal

[Wright v. State](#), 3D17-2529 (Mar. 3, 2021)

The Third District affirmed convictions and sentences for armed robbery burglary, attempted felony murder, and shooting a deadly missile.

This case revolved around the burglary of a gas station, and the State introduced collateral offense evidence of three other offenses – a robbery of a flower shop; a robbery-murder at a Food Center, and an armed robbery of a market. All three occurred within a few weeks of the offenses in the current case. The lower court did not abuse its discretion in admitting the collateral offense evidence as it was offered to prove identity where the same firearm was used in the offenses. “Here, Wright confessed that the firearm from the flower shot was used in the subject offense and the robbery-murder at a Marathon Food Center. Moreover, a ballistics expert testified, based on projectiles and casings, that the firearm used during the robbery-murder at the Marathon Food Center matched the firearm used in the subject crime.”

Fourth District Court of Appeal

[Roebuck v. State](#), 4D19-3628 (Mar. 3, 2021)

The Fourth District affirmed convictions and sentences for petit theft and resisting an officer without violence. The Court reversed for correction of several scrivener’s errors and for the removal of a \$200 assessment for the public defender’s fee. Any assessment in excess of \$100 must be based on “sufficient proof of higher fees or costs incurred.” No evidence was proffered in this case. On remand, the court may reduce the fee to \$100 or hold an evidentiary hearing after notice to the defendant.

[State v. Cremers](#), 4D19-3723 (Mar. 3, 2021)

During a pending direct appeal, the defendant pursued a Rule 3.800(b)(2) motion to reduce the costs of prosecution from \$200 to \$100. The trial court granted relief. The Fourth District reversed. The defense did not object contemporaneously with the assessment of costs. A contemporaneous objection is required to preserve the issue for appellate review, and preservation cannot be obtained through a Rule 3.800(b)(2) motion. The alleged error, the lack of sufficient evidence, is an “evidentiary error in the sentencing process.” Rule 3.800(b)(2) provides for relief from “sentencing” errors during the pending direct appeal. This did not qualify as a sentencing error and was therefore beyond the scope of a Rule 3.800(b)(2) motion.