Case Law Update
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Supreme Court of the United States

United States v. Cooley, 19-1414 (June 1, 2021)

The Supreme Court held that "an Indian tribe's police officer has authority to detain temporarily and to search a non-Indian on a public right-of-way that runs through an Indian reservation. The search and detention, we assume, took place prior to the suspect's transport to the proper nontribal authorities for prosecution."

An Indian police officer, driving on a public right-of-way on a reservation in Montana, observed a truck parked on the side of a highway. He thought the occupants might need assistance and approached, observing the driver with "watery, bloodshot eyes." The driver "appeared to be non-native." Two semiautomatic rifles were lying on the front seat. The driver was ordered to exit the vehicle and a patdown search was conducted. Tribal and county officers were called for assistance. The first officer returned to the truck and saw a glass pipe and plastic bag that contained methamphetamine. Other officers then arrived, including one from the Bureau of Indian Affairs. They directed the first officer to seize contraband in plain view, which led to the discovery of more methamphetamine. The driver, Coley, was then taken to the tribal police department, where federal and local officers further questioned him.

Van Buren v. United States, 19-783 (June 3, 2021)

Van Buren, "a former police sergeant, ran a license-plate search in a law enforcement computer database in exchange for money." This violated departmental policy, which limited such searches to law enforcement purposes. The Supreme Court held that the conduct did not violate "the Computer Fraud and Abuse Act of 1986 (CFAA) [18 U.S.C. s. 1030], which makes it illegal 'to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so as to obtain or alter.'" "This provision covers those who obtain information from particular areas in the computer – such as files, folders, or databases – to which their computer access does not extend. It does not cover those who, like Van Buren, have improper motives for obtaining information that is otherwise available to them."

Supreme Court of Florida

State v. J.A.R., SC20-1604 (June 3, 2021)

The Supreme Court resolved a conflict among the district courts of appeal regarding the authority of a trial court to impose a $100 public defender fee at sentencing when the juvenile respondent, or defendant in a criminal case, was not notified of the right to a hearing to challenge the imposition of the fee.

The minimum fee of $100 is statutorily required "on all defendants represented by the public defender when the individual is charged with a felony and convicted of a criminal act. When imposing the statutory minimum, the trial court need not announce the imposition of the public defender's fee or inform the defendant of a right to contest the fee. If, however, the trial court determines that the value of the public defender's service warrants a higher fee, it must notify the defendant of the fee as well as the right to contest it."

Allen v. State, SC19-1313 (June 3, 2021)

The Supreme Court affirmed a conviction for first-degree murder and the sentence of death.

Allen had been permitted to represent himself at trial and a Faretta inquiry was conducted. An offer of counsel was not renewed before the penalty phase began. After the penalty-phase jury returned its recommendation, and again, the next day, the court "inquired of Allen as to whether, if the offer of counsel had been renewed between the guilt and penalty phases, he would have accepted the offer of penalty-phase counsel." At that time, a "nunc pro tunc *Faretta* inquiry" was conducted. Allen "consistently represented that he would have waived penalty-phase counsel and that he would have continued to exercise his right to representation had the trial court renewed the offer of counsel before commencing the penalty phase." "Because the record demonstrates that the trial court cured the error while it still had jurisdiction to do so, by confirming with Allen that he had not wavered in his decision to represent himself, . . . we hold that there is no basis for appellate relief."

In Caldwell v. Mississippi, a plurality of the Supreme Court of the United States ruled that "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility

for determining the appropriateness of the defendant's death rests elsewhere." In this case, the jury was instructed that it was "'the judge's job to determine a proper sentence' if the jury found Allen guilty of first-degree premeditated murder." The prosecutor, in the opening argument of the penalty phase, had also advised the jury that it would be asked "to return a 'recommendation' of death." Allen argued on appeal that the combination of the instruction and comment violated Caldwell and constituted fundamental error.

"In Allen's case, despite the guilt-phase instructional error, the record establishes that the jury was properly informed as to its role in Allen's sentencing, including that if the jury found Allen guilty of first-degree premeditated murder, a separate penalty-phase trial would occur in which the jury's role would be to determine Allen's eligibility for the death penalty and recommend the appropriate sentence. Large portions of jury selection were devoted to addressing the jury's role should the case proceed to a penalty phase, including the death qualification of the jury, and the trial court properly instructed the jury regarding its role during the penalty phase. Thus, no *Caldwell* violation occurred."

During a post-penalty phase Spencer hearing, amicus counsel presented a mental health expert on behalf of Allen. The State then, pursuant to Fla.R.Crim.P. 3.202, sought and obtained a compulsory evaluation of Allen by its own expert and presented testimony from that evaluation. Allen challenged that on appeal as aFifth Amendment violation and argued that it was fundamental error.

Although compulsory mental health examinations of a defendant during a penalty phase "potentially" implicate the Fifth Amendment, "permitting the State's mental health expert to examine a capital defendant in order to rebut the defense's penalty phase mental health expert testimony *does not* violate the Fifth Amendment right against self-incrimination." Although Allen declined to present any mitigation during the penalty-phase or the subsequent Spencer hearing, the court appointed amicus counsel to develop and present such mitigation. As this was the trial court's decision, and not Allen's, the "facts suggest the making of a Fifth Amendment quandary." However, Allen did not challenge the appointment of an expert for his amicus counsel, and he subsequently filed his own pro se sentencing memorandum adopting amicus counsel's mitigation presentation. On appeal, he sought to "retain the benefit of the mental health mitigation established through [amicus counsel's expert] testimony but strike the rebuttal mental health testimony that the State presented. . . ." "We hold that by making the mental health mitigation presented by amicus counsel his own, Allen forfeited his claim." Alternatively, any error was not fundamental. This conclusion was based on the Court's view of the rebuttal

testimony of the State's expert as being "comparatively minimal." The trial court had accepted the defense expert's diagnosis of PTSD over the State's expert's contrary conclusion. Additionally, the aggravating factors included three of the most serious - CCP, HAC, and prior violent felony.

First District Court of Appeal

Earven v. State, 1D19-3927 (June 4, 2021)

The First District denied a petition alleging ineffective assistance of appellate counsel.

On direct appeal, counsel argued that the evidence was insufficient. The failure of counsel to cite federal case law on the issue did not constitute ineffective assistance: "Counsel thoroughly addressed this issue in the direct appeal and we have no basis for finding ineffective assistance. The gloss of adding federal citations to Earven's arguments would not have improved them, affected the outcome of his direct appeal, or advanced his case."

Nor was counsel ineffective for "failing to argue fundamental error related to how the aggravated assault jury instruction addressed the victim's fear. The parties agreed at trial to include an objective standard instruction." The Court noted that an issue of first impression existed in Florida – whether an objective standard instruction was appropriate under the particular facts of this case, "where the victim of an alleged aggravated assault testifies of having not been afraid." "Though Earven raises a fair point about whether this instruction was a good fit in his case, we cannot conclude that appellate counsel was ineffective 'for failing to raise a novel [fundamental error] argument on direct appeal.'"

One judge dissented and would have granted relief, concluding that the evidence of assault was insufficient, where the "specific victim *denies* that he or she was put in fear," absent other evidence indicating that the purported victim is not telling the truth.

Drayton v. State, 1D19-2069 (June 3, 2021)

Drayton received a Prison Releasee Reoffender sentence for resisting an "attempt by corrections officers to remove him from his cell." He argued that a PRR sentence could be imposed "only when the offender has been previously released from prison." The First District disagreed and affirmed the sentence.

One of the alternative means in which a PRR is defined in section 775.082(9)(a)1., Florida Statutes, is for any defendant who "commits or attempts to commit" any enumerated offense "while the defendant was serving a prison sentence."

Andrews v. State, 1D19-4322 (June 3, 2021)

Andrews was 17-years old when she committed the offenses of first-degree felony murder, burglary, robbery and grand theft. Originally sentenced to life in prison, she received a resentencing in the aftermath of Miller v. Alabama, and was resentenced to a term of 45 years followed by probation. This sentence was affirmed on appeal.

The resentencing judge was not "bound by a comment made by the original sentencing judge" that "if I had my druthers and full discretion" a sentence of about 20 years would probably be imposed. The resentencing was a de novo resentencing, in which the resentencing judge possessed "full sentencing discretion." The resentencing court "correctly employed its own independent judgment."

The First District rejected the argument that the resentencing judge "improperly discounted [the defendant's] status as a juvenile," when referring to the defendant as a "very mature 17-year-old." The sentencing judge "noted specifically that the defendant was a minor at the time of her crime: '[s]he was not 18 and that's an important factor.'"

A claim that the sentence imposed was "disproportionate to that of other juveniles who have committed homicides and receive lesser sentences" was rejected. A 45-year sentence "is not grossly disproportionate to the crime of first-degree felony murder."

Second District Court of Appeal

Medina v. State, 2D18-4719 (June 4, 2021)

The Second District reversed an order revoking community control; the trial court lacked jurisdiction because the "community control had expired before the State filed the affidavit of violation."

Medina was on community control for the third-degree felony of public assistance fraud. Multiple orders of modification resulted in restorations of community control or modifications of the term of supervision. Only the final order resulted in the total term of supervision exceeding the statutory five-year maximum for the third-degree felony, and the maximum period of five years expired prior to the filing of the affidavit of violation.

The State argued that there were multiple periods of time which should have been treated as tolled, thus keeping the total period of community control within the five-year maximum. The Court disagreed.

In determining whether time periods between the filing of an affidavit and the court's ruling on the affidavit of violation count towards time served on probation or community control, the Second District applied the analysis set forth in Gonzalez-Ramos v. State, 46 So. 3d 67 (Fla. 5th DCA 2010). Each time the "defendant was found in violation the trial court could have extended the term of probation but failed to 'avail itself of that option; instead, it simply continued the originally imposed' probationary term. . . . The court determined that on a third violation of probation the term had expired and that the trial court lacked jurisdiction." Here, too, the periods of time from the earlier proceedings on affidavits of violation were for time periods where the court restored or modified the conditions, but did not extend the term. Thus, the periods between the filings of those affidavits and the trial court's rulings on them did not result in tolling and counted towards the time served.

Mateo v. State, 2D19-3769 (June 4, 2021)

The Second District affirmed a judgment of conviction but remanded for correction of a scrivener's error. One judge, concurring with a separate opinion, addressed at length the standards for filing an Anders brief, and took issue with the statement in an Anders brief that had been filed in which counsel posited "the inability to find a meritorious argument that the 'trial court committed *significant* reversible error' in the case." The concurring judge disagreed with the qualification through the word "significant."

E.H.W. v. State,2D20-386 (June 4, 2021)

The Second District reversed a restitution order because the trial court lacked jurisdiction to enter it and further erred by convening a restitution hearing without his presence.

As to one of the two victims, the court's original order withholding adjudication was rendered when the juvenile was 17-years old. That order determined restitution as to the second victim. As to the first, it stated: "Restitution shall be determined as follows: [the first victim]." About 1 ½ years later, when the juvenile was almost 19-years old, the court held a hearing on the States "Motion for Court to Reserve Jurisdiction as to Restitution After His 19th Birthday." Over objection of defense counsel, the judge signed an order to determine restitution at a later time, stating that jurisdiction over restitution was being retained beyond the 19th birthday. The restitution hearing was then held after the 19th birthday, without the presence of the former juvenile, whose whereabouts were unknown.

The orders entered by the trial court to retain jurisdiction were insufficient. "Section 985.0301(5)(d) does not permit the retention of jurisdiction to determine the amount of restitution that is owed; rather, retention of jurisdiction is permitted over a child 'whom the court has ordered to pay restitution until the restitution order is satisfied.'"

Second, the trial court erred in proceeding without the presence of the respondent and without a voluntary waiver. The prosecutor had referenced a notice to appear and a prior failure to appear for a restitution hearing; and a court clerk stated that E.H.W. had "signed in court" for the hearing date, and appeared to have been noticed at an address in Palm Harbor, Florida. A DJJ representative, however, had a different address for E.H.W. "Unsworn statements from a clerk and a DJJ representative together with the unsworn statements and legal arguments of the prosecutor do not constitute competent, substantial evidence to support a finding of a voluntary waiver of presence."

Spicer v. State, 2D19-368 (June 2, 20221)

Spicer had falsely assumed the name of another person. The State originally charged him under both names. The State then recharged him, under a second case number, solely under his own name, to protect the innocent person whose name had been assumed. Two separate case numbers were involved and the State inadvertently nolle prossed the second case, which eliminated the innocent person's name. Recognizing the error, the State moved to vacate the nolle pros, which the trial court permitted. The nolle pros was then entered under the correct case number. In addition to vacating the nolle pros, the trial court, under that case number, entered a judgment and sentence.

As to the case number for which the nolle pros had been inadvertently entered, the trial court lacked jurisdiction to reopen it and enter a judgment and sentence after the nolle pros. "Because the nolle prosequi effectively ended the proceeding, any action taken subsequent to its entry was a nullity." However, "the State had no authority to enter a nolle prosequi" under the first case number because "the court had accepted Spicer's nolo contendere plea in that case." No final judgment and sentence had ever been rendered in that case, and therefore, as to that case, the appeal was dismissed for lack of jurisdiction. As to the other case number, the second case filed, the judgment and sentence were declared void and reversed and remanded for vacatur.

Swafford v. State, 2D19-4601 (June 2, 2021)

In addition to noting scrivener's errors that required correction after a revocation of probation, the Second District further noted that the trial court erroneously entered a second judgment of conviction after the probation revocation. The first judgment of conviction had been entered when the defendant was first placed on probation. "'Duplicative adjudications of guilt after revocation of probation or community control are superfluous, are unauthorized, and can cause undue confusion in future proceedings.'"

Third District Court of Appeal

Holmes v. State, 3D19-875 (June 2, 2021)

The Third District affirmed a conviction for first-degree murder.

Evidence was sufficient as to premeditation. The Court disagreed with "Holmes' characterization of what occurred as a 'spur-of-the moment act.'" Holmes knew the victim and had entered her residence with her permission. The killing by stabbing occurred after the victim rejected Holmes' request for $20. "After he became mad at the victim, he walked over to the kitchen sink, grabbed the knife from the sink, and held it to his side to hide it from the victim. He then pushed her into the hallway to avoid detection, and then held her until she fell to the floor. After she fell to the ground, he stabbed her for the first time. She struggled with Holmes for about twenty seconds because she did not want him to pull the knife out so that he could stab her again. Although having twenty seconds to contemplate his next action, he opted to pull out the knife and stab her again with enough force that the knife exited her back. Moreover, the assistant medical examiner's testimony reflects

that the victim was actually stabbed three times, and that any of the stab wounds could have independently caused death."

The trial court did not err in denying a motion to suppress the defendant's recorded statement to a detective. Holmes argued that "he unequivocally invoked his right to remain silent by stating, '[Y]ou know what, I gave you too much already,' when Detective Stroze asked Holmes if he could stenographically record his statement when going over his notes with Holmes." Under the facts of the case, the statement by Holmes was "not an unequivocal and unambiguous invocation of his right to remain silent. Rather, Holmes' statement was made in response to Detective Stroze's question if he could record Holmes while going over his notes with Holmes."

State v. Jones, 3D19-1939 (June 2, 2021)

The Third District affirmed an order dismissing the information. The trial court found that there was a double jeopardy violation. The court had previously "sua sponte discharge[d] the jury without the consent of the defendant and without manifest necessity."

After a jury had been sworn, the State filed late discovery that it had received three weeks prior, but not reviewed until that morning. It included recordings of 911 calls made by the defendant's daughter, which the State intended to use for impeachment if the defense opened the door to its use. A Richardson hearing was held as to the discovery violation, and the judge reserved ruling, after defense counsel asserted that "he was unable to apprise the court of the defense position without having heard the tapes." After a recess, defense counsel requested a State-charged continuance, and further advised the court that he had not yet listened to the tapes. The judge proceeded to find a significant discovery violation, which was prejudicial to the defense, and charged a continuance to the State.

After defense counsel noted that the speedy trial period would soon be expiring, the judge, without further discussion, discharged the jurors and reset the case for trial, without any reference to double jeopardy or a motion for mistrial. The defense later moved for a dismissal based on double jeopardy.

The Third District concluded that the trial court failed to conduct a proper Richardson inquiry, as it made a determination of prejudice to the defense without defense counsel having reviewed the tapes and without defense counsel addressing

the question of prejudice. The discharge of the jury was thus made on the basis of an improper determination of prejudice.

For purposes of double jeopardy, once the jury was sworn, the trial court could not declare a mistrial absent a manifest necessity or consent by the defendant. The failure of the defense to object to the judge's declaring a mistrial did not imply a waiver of the defendant's constitutional rights. Jones requested a State-charged continuance of the trial. "He did not request nor consent to the declaration of a mistrial. We cannot, therefore, construe Jones's silence or his failure to object to the court's sua sponte discharge of the jury as consent to a waiver of double jeopardy."

Similarly, defense counsel's "agreement to reset the trial for a future date" did not constitute an implicit waiver of double jeopardy. While defense counsel's silence did not constitute consent to the mistrial, "the State's silence in the face of the trial court's error was the functional equivalent of consent to the discharge of the information in this case."

Deshazior v. State, 3D20-325 (June 2, 2021)

The Third District affirmed the defendant's conviction and concluded that the trial court did not err in having him proceed to trial with counsel, as he "never made an unequivocal request to represent himself despite having been asked directly by the court whether he wished to do so."

Prior to trial, the defendant's counsel told the court that the defendant wanted new counsel. The trial court conducted an inquiry. When asked why he wanted new counsel, he stated, "what work she did?" The judge advised him that she had reviewed the file and depositions and that the defendant had not demonstrated cause for removing counsel. The judge then asked if he wanted to represent himself, and he stated: "I need another attorney." When told that he would not get another court appointed attorney, he said: "I want – on my own." The defendant then referenced a conflict and when asked again if he wanted to represent himself at the trial that was set for that day, there was no response and the judge stated: 'I've heard no response from Mr. Deshazior." The judge then found that there was no unequivocal request for self-representation and the trial proceeded with counsel.

The defendant's request was deemed equivocal. "The trial court asked him three times if he wished to represent himself in the proceedings, but Deshazior did not answer that he wanted to represent himself. The exchange reflects that the defendant was worried about representing himself and proceeding on his own, which

is why he never answered the trial court's question when he was asked whether he wanted to proceed pro se." After the judge stated that the trial would proceed with counsel because the defendant had not unequivocally expressed the wish to represent himself, "the defendant allowed his attorney to represent him during trial, and no issue regarding the attorney's representation was brought up again during the four-day trial."

Fourth District Court of Appeal

Prentice v. State, 4D19-3498 (June 2, 2021) (on rehearing)

Several sentencing errors were found, but they were errors which could be ministerially corrected, and the sentences were remanded for such corrections except for one cost issue.

Prentice received concurrent sentences of life in prison with 25-yaer mandatory minimum provisions. The convictions were for lewd and lascivious molestation. The offense, under section 800.0o4(5)(b), Florida Statutes, was a life felony, subject to either a term of life in prison, or a split sentence, between 25 years and life, followed by probation. There was no statutory option for both a life sentence and a 25-year mandatory minimum. The remedy on remand was a correction, not a de novo resentencing. The judge, at sentencing, stated that the defendant would spend the rest of his life in prison. The 25-year mandatory minimum provision would be stricken.

A public defender's fee was imposed in an amount in excess of that agreed to in the plea form and without notice of the higher amount or the right to contest. It was reduced to the agreed-upon amount.

Lewis v. State, 4D20-2093 (June 2, 2021)

The summary denial of a multi-claim Rule 3.850 motion was reversed as to one of the claims for further proceedings.

In the claim at issue, Lewis "alleged that defense counsel failed to tell him about a plea offer of between five to fifteen years, 'if he would cooperate.' He explained that shortly after trial his grandmother asked him why he did not accept the offer. Lewis alleged that the would have accepted the plea if he knew about it, since he faced a life term as a PRR. He added that the prosecutor would not have withdrawn the offer, as his more culpable codefendant received the same offer." The

trial court rejected the claim as incredible based on comments from Lewis during hearings, expressing his desire to proceed to trial. "Those letters and statements do not render Lewis' claim 'inherently incredible.'" On remand, the trial must either attach records conclusively refuting the claim or hold an evidentiary hearing.

State v. Shaul, 4D21-82 (June 2, 2021)

The Fourth District granted the State's petition for writ of certiorari seeking review "of the denial of its motion for authorization to execute a subpoena to obtain emergency room records and toxicology reports."

Shaul was charged with DUI, causing property damage. "The probable cause affidavit alleged: (1) Shaul's vehicle struck a mailbox and telephone police; (2) an officer smelled the odor of cannabis; (3) Shaul was slurring his speech, staggering to the curb, and moving slowly and lethargically; and (4) Shaul had glassy and bloodshot eyes." At a hospital, Shaul consented to a blood draw requested by law enforcement.

The state "met its burden of showing a compelling state interest by demonstrating that the medical records 'were directly related to the incident which led to the charges . . . and the ongoing criminal investigation.' . . . Given that the probable cause affidavit alleged that Shaul's vehicle struck a mailbox and telephone pole, that the officer smelled the odor of marijuana, and that Shaul was exhibiting signs of impairment, the state demonstrated a reasonable founded suspicion the materials would contain information relevant to the DUI investigation. The fact that the state had other incriminating evidence against Shaul was not a proper basis to prevent execution of the subpoena."

Bethea v. State, 4D21-98 (June 2, 2021)

The Fourth District reversed a domestic violence designation because the issue was not submitted to the jury.

Bethea was charged with battery under sections 784.03(1) and 741.283, Florida Statutes. The jury found the defendant guilty of battery and the court found that it was a crime of domestic violence and the judgment of conviction checked a box designating the conviction as one of domestic violence. The domestic violence designation triggers mandatory minimum sentences under section 741.283.

"Here, the jury was charged only on misdemeanor battery. It was not asked to make findings regarding bodily harm or injury of the victim or the victim's status as a 'family or household member' of Appellant." The court was thus "precluded from making the domestic violence finding on her own."

At a pretrial immunity hearing under the Stand Your Ground law, the court concluded that the defense would be required to present evidence. When the defense failed to do so, the court denied the motion to dismiss. The Fourth District subsequently decided that the defendant need only raise a prima facie claim of self-defense immunity, and that there was no evidentiary burden on the defense; it was only a requirement of sufficient allegations.

Although the trial court erred in applying the wrong burden when ruling on the pretrial motion to dismiss, the defendant was convicted by a unanimous jury at trial by proof beyond a reasonable doubt. That verdict cured the pretrial error. On the basis of a conflict among district courts of appeal on this issue, the Florida Supreme Court has granted review on the merits in the case of Boston v. State, SC20-1164. Therefore, the Fourth District withheld adjudication of its mandate in Bethea's case until 30 days after the Supreme Court disposes of the Boston case.

Fifth District Court of Appeal

Connell v. State, 5D19-3700 (June 4, 2021)

The Fifth District reversed a revocation of probation because the trial court terminated the defendant's probation "without an opportunity to contest the alleged violations of probation."

As part of a plea agreement, Connell was on probation and agreed to enter a mental health court program. After positive tests for THC, he was terminated from the program by the judge of the mental health court. He was not "given an opportunity to contest" the new violations, including testing positive for codeine. A hearing for sentencing was then scheduled and heard before a different judge. Connell contested the codeine charge, and the State and court proceeded with sentencing based on the previous guilty plea.

The Fifth District found "nothing in the record to put Connell on notice that he should prepare for both sentencing and to contest the alleged violations of probation on their merits at the hearing." Even if he had been prepared, the trial court stated that the parties were there only for sentencing, and the State's proffer of

evidence at that hearing did not transform it from a sentencing hearing to a probation violation hearing.

Manago v. State, 5D20-632 (June 4, 2021) (on rehearing)

The State argued that the Fifth District should have conducted a harmless error analysis consistent with what the Third District did in Green v. State, 46 Fla. L. Weekly D17 (Fla. 3d DCA Dec. 23, 2020). The Court disagreed, finding that it had already engaged in harmless error analysis and that Green was not applicable because it did not involve "traditional *Alleyne* error."

Both cases involve errors under Williams v. State, 242 So. 3d 280 (Fla. 2018), where the trial court failed to have a jury make the factual finding under section 775.082(1)(b) as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim. In the Green decision, the Court looked to the evidence from trial and concluded that although it was strong, the error was still not harmless. Green also referred to the trial court, in a juvenile resentencing proceeding, as having conducted its own harmless error analysis when making the finding of killing or intending to kill. The Fifth District, in Manago, stated that the Florida Supreme Court, in Williams, "referred only to an appellate court conducting a harmless error review. Nothing in *Williams* suggests that a resentencing court can conduct its own harmless error analysis of its concurrent *Alleyne* violation. As the Third District in *Green* and we in our original opinion noted, harmless error reviews are only conducted by appellate courts."