

Case Law Update
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Supreme Court of Florida

[James v. State](#), SC20-1036 (July 8, 2021)

The Supreme Court affirmed the dismissal of a successive Rule 3.851 motion. The motion was dismissed by the trial court as untimely. The convictions and sentences had been final for more than 23 years prior to the filing of the motion and James made “no argument as to why he believes these claims were timely or why the trial court erred in dismissing them as untimely.” Additionally, the claim regarding James’s “competency to waive his state postconviction proceedings was raised and resolved in a prior postconviction proceeding,” and was “procedurally barred and not subject to re litigation in the instant proceeding.”

[Davidson v. State](#), SC19-1851 (July 8, 2021)

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

Davidson had been on conditional release from a prison sentence and removed the GPS monitor that he was required to wear. He then committed the rape of one of his longtime friends and strangled her. He confessed to committing the murder and several other offenses and he pled guilty to the charged crimes and waived a penalty-phase jury.

The trial court did not commit fundamental error in finding that the aggravating circumstances were sufficient and that they outweighed the mitigating circumstances. “Davidson’s argument rests upon the faulty premise that the sufficiency and weighing determinations of section 921.141 are subject to the beyond-a-reasonable-doubt standard. Our recent case law is inconsistent with that premise.”

Davidson challenged the trial court’s rejection of the statutory “substantial-impairment mitigator.” The rejection of this factor has been upheld where a defendant “took logical steps to conceal his actions from others.” “Here, Davidson took several logical steps to conceal his murder of Welsh and flee from her home.

For example, Davidson lied to R.S. [the victim's son] to keep him from entering the home; Davidson cut off his GPS tracking device; Davidson stole the family's minivan to facilitate his escape; and, while in the minivan, Davidson discarded his cell phone to avoid being tracked and directed M.S. [the victim's daughter] to duck down so that others could not see her.”

Nor was the rejection of this mitigator inconsistent with the trial court's acceptance of other nonstatutory mitigators. “[T]he trial court could properly determine that Davidson suffered from mental-health issues to some extent, but nonetheless had the ability to conform his conduct to the requirements of law.”

The trial court did not err in its assignment of little weight to nonstatutory mitigators. Although Davidson's father abandoned him at a young age, and he then spent time living with uncles who were sex offenders, “Davidson did not present evidence establishing a close nexus between this mitigating evidence and his murdering Welsh.” There was no evidence that the relatives abused him; nor was there evidence of the duration of his stay with them. Nor was there anything arbitrary about the court assigning the same weight, little, to both Davidson's good behavior in court and his mental-health mitigation. The sentencing order reflected “individualized consideration to each proposed” circumstance.

The Court also found that the guilty plea was voluntary. The trial court had conducted a thorough colloquy and the points covered in the colloquy are summarized in the Supreme Court's opinion: e.g., the forfeiture of a guilt-phase trial and related rights, such as proof beyond a reasonable doubt, a jury, counsel at trial, the right to present and confront witnesses, the right to remain silent, the only two sentencing options for first-degree murder, and confirmation from Davidson that the plea was based on his voluntary will.

Eleventh Circuit Court of Appeals

[United States v. Matthews](#), 20-10554 (July 6, 2021)

Matthews pled guilty to making a false statement to a firearms dealer. The Eleventh Circuit affirmed Matthews' sentence.

The district court did not err in applying the sentencing enhancement for “an offense involving a semiautomatic firearm that is capable of accepting a large capacity magazine.” This was the first case in which the Eleventh Circuit addressed the application of this enhancement to the underlying offense of making a false

statement to a firearms examiner. “Matthews attempted to purchase a semiautomatic rifle that comes standard with a 30-round magazine and committed the offense of making false statements to a firearm dealer while inside Mike’s Gun Shop, which sells both firearms and magazines. Based on these facts, it was reasonable for the district court to infer that a magazine capable of accepting more than 15 rounds of ammunition – that comes ‘standard’ with the rifle – was in close proximity to the rifle Matthews sought to purchase.”

The Court also reiterated its prior holding that the prior conviction for felony battery under Florida law was “categorically a crime of violence” under the Guidelines.

[Pitts v. United States](#), 18-12096 (July 6, 2021)

The Eleventh Circuit affirmed the denial of a successive motion under 28 U.S.C. s. 2255. Pitts challenged his sentencing enhancement under the Armed Career Criminal Act, pursuant to Johnson v. United States, 576 U.S. 591 (2015), which addressed the vagueness of “violent felony” as used in the residual clause of the ACCA. .

The Court granted a COA on the issue of whether a prior California state conviction for forcible rape qualified as a violent felony predicate under the ACCA. When the Court granted that COA, it overlooked the existence of two other predicates for serious drug offenses, in addition to one armed robbery and another robbery. As a result, the issue that was the subject of the COA was irrelevant, as sufficient ACCA predicates existed regardless of whether the forcible rape qualified as a violent felony. The Court, on appeal, continued to consider whether the two robberies qualified as predicates.

For purposes of section 2255 analysis, the Court first noted that Pitts did not satisfy his burden of showing that the district court, at sentencing, relied solely on the residual clause of the ACCA, which could implicate Johnson analysis. Pitts did not identify anything from the sentencing record to show that the district court relied on the residual clause, instead of the elements clause, when concluding that a 1978 robbery conviction was a violent felony. Rather, Pitts tried to point to clear precedent to establish that the predicate offense was a violent felony only under the residual clause. The decisions Pitts relied on with respect to the armed robbery conviction were all distinguished by the Eleventh Circuit.

“At best for Pitts, it is unclear from the record whether the sentencing court relied on the residual clause or the elements clause or the enumerated offenses clause, or all three of them, when it found that his 1978 California conviction for robbery with a firearm was a violent felony under the ACCA. And, when it is unclear what role, if any, the residual clause played, the movant loses.”

[United States v. Leonard](#), 19-14142 (July 8, 2021)

The Eleventh Circuit affirmed a conviction and sentence for being a felon in possession. That offense requires that the defendant know that he or she is a felon. “This case requires us to decide whether an indictment that does not clearly set out that element warrants an automatic presumption of prejudice to the defendant. It does not. That kind of error is not the sort of structural infirmity that infects the entire trial, so we review it using the same harmless-error inquiry that applies to most other types of errors, including constitutional ones.”

The Court first found that citing 18 U.S.C. s. 922(g), and not s. 924(a)(2), did not render the indictment defective and did not result in the failure to charge a complete criminal offense. Section 922(g) was an offense by itself; section 924(a)(2) set out the penalties for the offense. The district court therefore had jurisdiction.

An amended indictment alleged that the two codefendants “possessed a firearm . . . having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and did so knowingly.” In this appeal, the Court did not address the question of whether the phrase “did so knowingly” extended to the knowledge requirement of the defendant’s felon status, because any possible error was harmless. The alleged error “did not contribute – at all – to the verdict.” It “did not affect his ability to defend himself against the charges.” Leonard “received adequate notice that he was being charged s a felon in possession of a firearm, and that the government needed to prove that he knew his felon status.” In open court, the prosecution had announced that it had amended the indictment in anticipation of the Rehaif decision in which the Supreme Court held that the offense required proof of knowledge of the felon status. And, while “most people convicted of a felony know that they are felons,” the record was clear “that Leonard had more than one prior conviction.” Leonard gave the Court “no reason to conclude otherwise – he does not even attempt to argue that he did not know he was a felon at the time he possessed the gun or that he would have offered the jury evidence to prove this point.”

Another factor was whether “Leonard was harmed by losing the right to have the public determine whether there was probable cause to charge the missing element.” That factor was not at issue, as the grand jurors were presented with such evidence when the indictment was amended.

First District Court of Appeal

[Bing v. State](#), 1D20-381 (July 6, 2021)

The First District affirmed multiple convictions and held that the trial court did not abuse its discretion by denying a motion to compel production of grand jury transcripts.

The pretrial motion was based on alleged inconsistencies in witness testimony as revealed in pretrial depositions. The trial court conducted an in-camera review of the relevant testimony. Such alleged inconsistencies may provide a basis for disclosure of grand jury testimony when the defense is seeking assistance in preparation of a defense or for cross-examination of witnesses. Here, however, the defense sought the grand jury testimony to “ensure that the indictment was not based upon perjured testimony.” “Yet, beyond alleging mere inconsistencies, Appellant’s motion failed to provide a specific basis to conclude that any grand jury witness committed perjury. Appellant could not seek a blanket production of the grand jury transcripts based on mere surmise or speculation regarding possible inconsistencies in the testimony.”

[Ivey v. State](#), 1D20-1250 (July 6, 2021)

The First District affirmed convictions for attempted manslaughter and other offenses.

Ivey argued that counsel was ineffective and had a conflict of interest. A claim of ineffective assistance of counsel, when raised on direct appeal, must be apparent on the face of the record. The claim here was not apparent and was therefore beyond the scope of a direct appeal.

Details regarding the alleged conflict of interest are not provided in the opinion, which rejected the claim by noting that “[d]isagreements over trial strategy, such as occurred during Appellant’s trial, do not amount to a conflict of interest.”

An alleged sentencing scoresheet error was harmless, as the record reflected “among other things, that the trial court imposed maximum sentences and ordered such sentences to be served consecutively, and given the trial court’s comments at sentencing, the alleged scoresheet error does not warrant a remand for resentencing.”

Second District Court of Appeal

[Haney v. State](#), 2D19-3764 (July 7, 2021)

A PRR sentence was reversed on direct appeal. The record did not reflect any stipulation or evidence that the defendant qualified as a PRR.

[State v. Saunders](#), 2D20-1532, 2D20-1555 (July 7, 2021)

The Second District reversed downward departure sentences that were imposed without a valid basis for the departure.

Saunders was sentenced to time served for two felony petit theft convictions; the State did not agree to the sentences when Saunders entered a plea to the court and asked for time served based on his age – 70 years old. The lowest sentence permitted under the Criminal Punishment Code, absent a valid departure, was 22 months in prison. The only basis for the departure referenced by the trial court was a notation on the scoresheet that the “sentences were the result of a plea agreement.” However, there was no plea agreement, as the State objected to the sentence that was being imposed.

The sentencing judge had also noted that the court was trying to get people out of the system and that the jail was facing an overcrowding problem. That, however, was not consistent with legislative sentencing policies. It was also unclear whether the trial court was basing its decision on the pandemic or on “more general reasons articulated.” Regardless, “there was no evidence supporting the findings and they are otherwise contrary to stated legislative purposes.”

[Person v. State](#), 2D20-2227 (July 7, 2021)

The Second District partially reversed an order summarily denying a Rule 3.800(a) motion to correct illegal sentence because the order failed to address one of the claims raised in the motion. The claim at issue related to confusing handwritten notations on the written sentence.

Third District Court of Appeal

[Lee v. State](#), 3D20-256 (July 7, 2021)

The Third District affirmed a conviction for second-degree murder, but reversed a conviction for unlawful possession of a weapon while engaged in a criminal offense.

The Court addressed a jury instruction issue, regarding the allegedly erroneous use of the amended 2014 instruction on justifiable use of deadly force. Without setting forth the actual instructions used, or the facts of the case, the Court noted that the instructions given were “nearly the same” as those at issue in [State v. Floyd](#), 186 So. 3d 1013 (Fla. 2016), where the Supreme Court held that then Standard Instruction 3.6(f) “accurately and correctly explains this law to the jury with regard to the factually complex situations where the jury must unwind the facts to determine who was the initial aggressor.”

The conviction for use of a firearm during the murder resulted in a double jeopardy violation. “Where the use of a weapon is the basis for enhancing the charge of second-degree murder to a life felony, double jeopardy bars a separate conviction and sentence for misuse of the same firearm.”

Fourth District Court of Appeal

[Blair v. State](#), 4D20-1916, 4D20-2234 (July 7, 2021)

Without setting forth any facts, the Court affirmed a challenge to a sentence, quoting an earlier holding: ““We know of no principle or case, nor has one been cited to us, which holds that due process includes the right of an express explanation on why a motion to downward depart was denied. We decline to recognize such a right.””

Fifth District Court of Appeal

[Haar v. State](#), 5D21-1213 (July 9, 2021)

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

Haar argued that article I, section 17 of the Florida Constitution forbids an indefinite term of imprisonment. The Fifth District disagreed, as the Florida Supreme Court previously rejected that argument, in Ratliff v. State, 914 So. 2d 938 (Fla. 2005), when it held that a sentence of life imprisonment did not violate that constitutional provision.