

Case Law Update
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First District Court of Appeal

[Adams v. State](#), 1D20-1677 (July 28, 2021)

The First District reiterated its prior holding that “section 948.06(2)(f)1., Florida Statutes, should be construed to require that a defendant meet all conditions listed in sub-subparagraphs a. through d. to qualify for application of subparagraphs 1. And 2.)” The statute at issue addresses the circumstances under which a trial court “shall” modify probation upon a finding of a violation. Although the statutory language states that probation “shall” be modified “when any of the following applies,” that language is construed as mandating modification, as opposed to incarceration, only when “all” of the enumerated factors are satisfied.

Second District Court of Appeal

[Anderson v. State](#), 2D19-1545 (July 30, 2021)

Anderson appealed convictions and sentences for operating an unregistered vehicle, driving while license suspended or revoked (for a third or subsequent conviction), and possession of a controlled substance. The Second District affirmed in part and reversed in part.

Trial counsel was “ineffective on the face of the record for failing to object to the sufficiency of the State’s evidence of the prior DWLSR convictions necessary to convict him of a felony on that count.” The only evidence of the prior convictions was a redacted driver’s license record showing the prior convictions. When “prior convictions constitute an element of a charged crime, the prior convictions must be proven beyond a reasonable doubt by introduction of certified copies of each judgment.” Although there was no objection, the failure to prove the element of the offense did not constitute fundamental error, as the evidence established, at a minimum, the lesser misdemeanor DWLSR offense. However, counsel’s failure to raise the sufficiency of evidence argument in the trial court constituted ineffective assistance. The appellate court could not perceive any strategic reason for counsel not to challenge the sufficiency of the evidence.

[Claudio-Martinez v. State](#), 2D19-3639 (July 30, 2021)

The Second District reversed a conviction for aggravated battery with a deadly weapon for a new trial. Trial counsel was ineffective “on the face of the record by failing to obtain a jury instruction on the justifiable use of nondeadly force.”

The defendant joined an ongoing fight between his cousin and a neighbor. At some point, the neighbor had armed himself with a broomstick and the cousin may have been armed with a screwdriver. After the defendant joined the fight, the victim was stabbed in the back. The victim invoked the Fifth Amendment at trial. The defendant testified that he saw his cousin being beaten with the broomstick; the victim was bigger than either the defendant or his cousin. The defendant started grabbing things in the kitchen and ran outside to defend his cousin, “but he could not remember what happened next.”

At the charge conference, although neither self-defense nor defense of another was raised by defense counsel, the court announced that it included the standard instruction on justifiable use of deadly force. There was no discussion of justifiable use of nondeadly force. During closing argument, defense counsel objected when the prosecutor started explaining justifiable use of nondeadly force. During the ensuing bench conference, there was still no request for an instruction on nondeadly force.

The evidence supported an instruction on nondeadly force. A knife, although a potentially deadly weapon, can be used without deadly force. The victim was “stabbed in the back near his shoulder blade. These facts, as a matter of law, do not constitute deadly force, and the question of whether the force used was deadly or nondeadly was then a question for the jury.” The appellate court did not perceive any strategic reason for counsel to forego an instruction on nondeadly force. The absence of such an instruction “would make it more difficult for Mr. Claudio-Martinez to prove that he was justified in his actions under his theory of defense.”

The absence of an instruction on nondeadly force prejudiced the defendant because it deprived him of a defense. “[P]roviding the jury with only the justifiable use of deadly force instruction, when it is, arguably, inapplicable to the facts of this case, may have actually made it more difficult for Mr. Claudio-Martinez to prevail on his theory of defense because the use of deadly force is permitted in a narrower set of circumstances than the use of nondeadly force.”

[Miller v. State](#), 2D20-3204 (July 30, 2021)

The trial court erred in dismissing an amended Rule 3.850 motion as untimely. Miller’s certificate of service showed “service to the Office of the State Attorney by use of a prison drop box and should have been deemed timely under the circumstances of this case.”

Additionally, two of the claims that were denied were facially sufficient and were not refuted by record attachments. Miller was convicted at trial for three sex offenses. In one claim, Miller alleged counsel failed to call a “medical expert to counter the testimony from the nurse who examined the victim regarding the lack of conclusive physical findings that the victim had ever engaged in intercourse and her opinion that penetration could have occurred without such physical signs being present.” “Mr. Miller was not required to name a specific expert for this type of failure to call a witness claim in order for the claim to be deemed sufficient. His merely stating that any OB/GYN would have been able to testify that during an exam following the nature and frequency of the acts of penetration as described by the victim and for which Mr. Miller was charged, the physical signs of intercourse would be apparent is a legally sufficient claim.”

Another claim alleged that counsel was ineffective for failing to accept the trial court’s offer of a mistrial “based upon the detective testifying about certain acts that were excluded. . . .” The trial court treated this claim as “insufficient and conclusory.” The claim was sufficient and the record did “not refute the claim that his counsel was ineffective in advising him to reject the mistrial offered by the trial court, where it declared on the record that a curative instruction was insufficient and counsel expressed on the record that he thought it would result in a dismissal of the charges and an attachment of jeopardy if a mistrial was declared.”

[Williams v. State](#), 2D20-2411 (July 28, 2021)

The summary denial of a Rule 3.850 motion was reversed for further proceedings.

The motion alleged that “trial counsel was ineffective for incorrectly advising him that he faced a maximum sentence of fifteen years’ imprisonment and for not informing him when they discussed the State’s three-year plea offer that he could be sentenced to thirty years’ imprisonment as a habitual felony offender. . . .” The trial court found that there was no prejudice because the defendant was sentenced to 15 years incarceration, and, even if counsel’s advice was incorrect, the defendant “was

sentenced to the same amount of time that he believed he could have been sentenced.” This was an erroneous analysis as to prejudice, which focuses on “the time of the offer” and “what would have been done with proper and adequate advice.” Williams alleged “that he would have accepted the State’s offer [of three years] if he had known he faced the lesser sentence of thirty years in prison. . . .”

The motion further alleged that if counsel had not overstated the strength of the alleged defense, Williams would have accepted the plea. The trial court’s order failed to address the related claim that counsel “unreasonably interpreted caselaw when assessing the strength of the State’s case. . . .”

Third District Court of Appeal

[Hitchman v. State](#), 3D21-1154 (July 28, 2021)

A prohibition petition, in which Hitchman sought “to prevent the lower tribunal from enforcing the requirement she submit to fingerprinting as one of the conditions of her probation,” was denied.

Midway through a no contest plea, the court ordered fingerprinting as a condition of probation. Hitchman objected, “claiming the trial court exceeded its jurisdiction in compelling the exemplars.” The case arose in county court. Hitchman’s claim was based on the fact that the court withheld adjudication. Hitchman argued, on the basis of section 943.051(1), Florida Statutes, and Florida Administrative Code Rule 11C-4.003, that only a single collection of fingerprints is authorized and that the legislative authorization for law enforcement agencies to obtain the prints as prescribed by rule precluded the court from ordering fingerprints. The Third District rejected that construction of the rule and statute.

Fourth District Court of Appeal

[Reyes v. State](#), 4D20-1169 (July 28, 2021)

The summary denial of a Rule 3.850 motion was affirmed. Reyes, who was not a citizen, pled no contest and received a referral to drug court. After completing the program, the court dismissed the charges and vacated her plea.

After learning that the Department of Homeland Security “rejected her request to renew her Temporary Protected Status” on the basis of the criminal charges, notwithstanding their dismissal, Reyes filed the Rule 3.850 motion, alleging

misadvice of counsel regarding the significance of the successful completion of the drug court program. The trial court lacked jurisdiction to entertain the motion. Rule 3.850(a) provides grounds “for relief from judgment or release from custody. . . .” Judgment is defined in Rule 3.650 as an adjudication that the defendant is guilty or not guilty. The dismissal of charges and related vacation of a plea “cannot meet the definition of a judgment.” The Fourth District would not treat the motion, in the alternative, as a habeas corpus petition, because Reyes did not allege that she was being detained.

Fifth District Court of Appeal

[Jones v. State](#), 5D20-1459 (July 30, 2021)

The Fifth District reversed the denial of a Rule 3.850 motion, following an evidentiary hearing, and remanded for a new hearing, with counsel appointed for Jones.

The motion alleged that trial counsel was ineffective for failing to investigate and present testimony from several witnesses who would have supported the defense that the offenses were perpetrated by another person, and, that an alleged battery did not take place. Jones had been convicted of aggravated burglary.

When the trial court scheduled the evidentiary hearing, it appointed Regional Criminal Conflict Counsel to represent Jones at the hearing. However, for unknown reasons, RCCC does not appear to have been aware of the order and the evidentiary hearing was ultimately held without any counsel for Jones. Jones additionally requested counsel at the outset of the evidentiary hearing. And, the court’s minutes asserted that Jones had been represented by the Public Defender, who did not appear at the hearing. The appellate court further reviewed the transcript of the evidentiary hearing, and found that the defendant, who “reluctantly represented himself,” was repeatedly admonished for improper questioning, and “was unprepared, clearly challenged, and possibly unable to represent himself without the assistance of counsel.” “Given the applicable law and considering Appellant’s lack of sophistication, limited education, the potentially complex evidentiary hearing which necessitated subpoenaing witnesses, we find that the postconviction court abused its discretion when it denied Appellant’s request for counsel made at the outset of the evidentiary hearing.”

[Conley v. State](#), 5D21-389 (July 30, 2021)

The Fifth District affirmed the denial of a Rule 3.800(a) motion, in which Conley challenged his designation as a sexual predator. Conley argued that he lacked the requisite prior felony conviction required for such a designation under section 775.21, Florida Statutes. Under that statute, qualifying predicates of prior convictions do not include second-degree felonies. And, for “a ‘current’ second-degree felony to qualify a defendant for a ‘Sexual Predator’ designation, said defendant would also need to have a prior enumerated conviction.”

While the motion alleged that the defendant lacked the qualifying prior conviction, the defendant’s “current” convictions, from the same trial at which he had multiple convictions for second-degree felonies, also included one for kidnapping, which was a first-degree felony punishable by life. That conviction, for which the victim was 17-years old, “qualified Conley for designation as a ‘Sexual Predator’ without the need of a prior conviction.”

[Jordan v. State](#), 5D21-1692 (July 30, 2021)

The Fifth District denied a habeas corpus petition in which Jordan challenged his pretrial detention without bail.

Jordan was charged with trafficking, and a \$50,000 bond was set. When the State failed to file an information within 33 days, Jordan moved for release on his own recognizance, pursuant to Fla.R.Crim.P. 3.134, and the court granted the request. When Jordan was arrested for a new felony, his bond was revoked pursuant to s. 903.0471, Florida Statutes, which permits revocation of pretrial release and authorizes pretrial detention “if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.” Jordan again moved for release on his own recognizance, because the State had still not filed an information, and more than 40 days of custody had elapsed.

Rule 3.134, which provides for release when the State has not filed an information within 33 days, absent good cause, provides that “[i]n no event shall any defendants remain in custody beyond 40 days unless they have been formally charged with a crime.” Section 903.0471, Florida Statutes, however, permits a judge to order pretrial detention when probable cause exists regarding the commission of a new offense while on pretrial release. Section 903.0471 was a statute, and was “part of a comprehensive legislative scheme relating to pretrial detention and release.” Rule 3.134, however, was a procedural rule, which did not create any

“new substantive rights” and was “adopted by the Florida Supreme Court to prescribe the means and method of applying and enforcing duties and rights as created by the legislature.” Reading the rule and statutory provisions together, the release contemplated by Rule 3.134 was “still subject to the basic condition that a defendant refrain from committing new crimes.” And, “if there was a conflict between Rule 3.134 and section 903.0471, the statute, rather than the rule, would govern.”