Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Carter, 17-15495 (Aug. 3, 2021)

Carter, after pleading guilty to being a felon in possession of a firearm, challenged his sentence under the Armed Career Criminal Act, and the Eleventh Circuit reversed and remanded for resentencing.

Under the elements clause of the ACCA, a prior predicate felony conviction must have a mens rea of knowledge or intent. The criminal intent must be more than recklessness. The Georgia offense of aggravated assault with a deadly weapon, when based on a simple assault, was not a violent felony under the elements clause. The deadly weapon aggravator element of the offense did not "import a mens rea requirement greater than recklessness."

United States v. Van Buren, 18-12024 (Aug. 4, 2021)

On remand from the Supreme Court, the Eleventh Circuit vacated Van Buren's conviction for computer fraud under 18 U.S.C. s. 1030 and remanded for further proceedings.

The Eleventh Circuit previously affirmed a conviction because Van Buren "misused a database for an inappropriate nonbusiness reason, even though he was otherwise authorized to use and could lawfully access the database." In its opinion of June 3, 2021, the Supreme Court disagreed and held that the statute "applies when a person 'accesses a computer with authorization but then obtains information located in particular areas of that computer – such as files, folders, or databases – that are off limits to him.' . . . 'It does not cover those who, like Van Buren, have improper motives for obtaining information that is otherwise available to them.'"

United States v. Cordero, 18-10837 (Aug. 4, 2021)

The Eleventh Circuit affirmed orders denying Cordero's motions "seeking to clarify, modify, and terminate early his term of supervised release." His sentence

had been imposed pursuant to a plea agreement for accessing with intent to view child pornography.

A sealed order of the district court had required Cordero to "disclose information related to work he performs as part of his security business and to disclose his sex offender status to potential clients." Cordero argued that this was an impermissible modification of the terms of supervised release which required an evidentiary hearing under Fed.R.Crim.P. 32.1(c); the Court disagreed. The district court's order "made it clear that it was merely enforcing standard condition #13 of Cordero's supervised release, which provided that '[a]s directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement." The district court's order was fully consistent with this standard condition and was not a new occupational restriction.

Cordero further challenged the original third-party notification condition as an occupational restriction "because it encompasses notifications to prospective employers and is therefore invalid because the district court failed to make the necessary findings under U.S.S.G. s. 5F1.5." Cordero did not challenge this by direct appeal from his 2013 sentencing, and such a challenge was now untimely "and otherwise barred by the sentence-appeal waiver."

The district court also denied a motion to modify conditions of supervised release by eliminating a restriction on internet access. The restriction on internet access was appropriate based on the nature of the offense and the factors under 18 U.S.C. s. 3553(a). For sex offenders, internet access "'could well enable a sex offender to offend once again.'" Cordero also challenged the constitutionality of the restriction based on the Supreme Court's Packingham decision of 2017, based on First Amendment overbreadth. The Eleventh Circuit joined three other circuits in holding that such a challenge could not be made through a motion under 18 U.S.C. s. 3582 for modification of conditions of supervised release. Additionally, the substantive claim was foreclosed by the Eleventh Circuit's prior decision in United States v. Bobal, 981 F. 3d 971 (11th Cir. 2020).

First District Court of Appeal

Schulte v. State, 1D20-1518 (Aug. 4, 2021)

In an appeal from the sentence imposed for second-degree murder, Schulte argued that the trial court erred in conducting a joint sentencing hearing for all of the codefendants, as opposed to an individualized proceeding. Absent objection in the trial court, this claim was reviewed under the fundamental error standard of review. Schulte also challenged the sentencing court's use of language pertinent to death penalty proceedings – i.e., the listing of multiple aggravating and mitigating factors. The First District rejected these arguments and affirmed the sentence.

The factors pertinent to Schulte were announced prior to those of the codefendants and the sentence. There was no error, let alone fundamental error.

Morris v. State, 1D20-1794 (Aug. 4, 2021)

The First District denied Morris's seventh pretrial pro se writ petition, which raised a Stand Your Ground claim. The trial court's determination that Morris was not entitled to immunity was not erroneous.

The trial court had conducted an evidentiary hearing and found credible the testimony of the victim "that he was not carrying any weapon or anything that could have been perceived as a weapon, that he made no aggressive movements towards Morris, and that he did not start an altercation with Morris."

Maxey v. State, 1D21-276 (Aug. 2, 2021)

A pretrial petition for writ of certiorari, challenging the denial of motions to dismiss a grand theft charge and to enforce a plea agreement was dismissed due to lack of jurisdiction. The Court cited a prior case for the point that a certiorari petition is untimely when filed more than 30 days after its rendition, and a motion for reconsideration is not an authorized motion in the trial court and had no tolling effect on the rendition and finality of the order denying relief.

Second District Court of Appeal

Dibelka v. State, 2D19-4085 (Aug. 4, 2021)

The Second District affirmed a conviction for petit theft, but reversed for further proceedings with respect to multiple assessments for fines and costs. Some exceeded maximum statutory amounts – e.g., costs of prosecution and investigation under s. 938.27(8) ($100 limit absent an exercise of discretion based on evidence). Some appear to have been scrivener's errors, citing the erroneous statutory authority. Due to a mixture of felony and misdemeanor convictions, the order also included some duplication when setting forth the costs.

Aristidu v. State, 2D19-4882 (Aug. 4, 2021)

In a appeal from two orders revoking probation from two different cases, the Second District granted relief, with the State's concession, as to the revocation of two third-degree felonies. The "trial court was without jurisdiction to revoke . . . probation on those counts because [Aristidu] had already served more than the five-year statutory maximum in jail, in prison, and on probation."

Third District Court of Appeal

Nelson o/b/o minor child, N.N., 3D21-380 (Aug. 4, 2021)

The Third District transferred this appeal to the circuit court. N.N. appealed a county court order denying a motion to vacate a plea of no contest to a civil traffic infraction. The appeal proceeded to the Circuit Court, but the Clerk of the Circuit Court, believing that recent legislation required transfer to the District Court of Appeal, transferred the case. Subject matter jurisdiction, however, was with the circuit court. Under Fla. Stat. s. 318.16(1) (2021), "[i]f a person is found to have committed an infraction by the *hearing official*, he or she may appeal that finding to the circuit court.'" Official is statutorily defined to include a judge presiding over traffic infractions.

Cole v. State, 3D21-599 (Aug. 4, 2021)

The trial court correctly denied two motions to withdraw a plea as untimely. Each motion alleged that it was placed in the hands of correction officials more than one year after the sentence was rendered. Motions to withdraw pleas under Rule

3.170(l) must be filed within 30 days of the rendition of the sentence. After that time period, relief must be sought under Rule 3.850.

Fifth District Court of Appeal

State v. Miller, 5D20-1183 (Aug. 6, 2021)

The Fifth District reversed an order granting a Rule 3.850 motion. The trial court found, after an evidentiary hearing, that trial counsel was ineffective. The Fifth District concluded that Miller "failed to carry his burden under the standard set forth in *Strickland v. Washington*."

Miller was convicted of lewd or lascivious molestation of a person 12 years or older but under the age of 16. At trial, the defendant and victim gave extremely different accounts of what transpired. In the claim of ineffective assistance, Miller challenged counsel's actins with respect to DNA evidence, cell phone GPS evidence, and the condition of the defendant's car, in which the offenses occurred.

At trial, "there was no conclusive evidence establishing that Miller's DNA was on the victim's bra." There was a DNA match for one out of every 2,300 males, "including every male in Miller's paternal lineage." It was also "possible for DNA to transfer from one article of clothing to another when the clothing was comingled, as occurred in this case." "Trial counsel emphasized the forensic scientist's testimony during closing argument and also argued that the victim's use of Miller's seat rag could have resulted in the potential presence of Miller's DNA on the victim's bra and would explain the absence of Miller's DNA on the victim's underwear." Counsel's conduct with respect to the DNA was not deficient, even though counsel did not seek independent testing. Counsel "offered a reasonable explanation at trial for the presence of Miller's DNA on the victim." Nor was prejudice established by the failure to seek the exclusion of all DNA evidence "based on improper handling" and the failure to test the victim's clothing to determine whether the DNA evidence "came from saliva or skin cells, given the lack of staining on the victim's clothing." Miller failed to present evidence at the evidentiary hearing as to these claims. Furthermore, additional evidence challenging the State's DNA evidence would have been cumulative "and would not necessarily have altered the outcome of the trial."

The offenses in this case occurred in 2010, and "cellphones with GPS capabilities were not as ubiquitous as they are now." Miller did not present any evidence at the hearing that his and the victim's phones had GPS capabilities. And,

absent actual GPS evidence at the evidentiary hearing, it was impossible to determine that there was "a reasonable probability that the outcome of the trial would have been different.

Miller finally argued that counsel "should have presented evidence challenging the victim's claim that she urinated on herself before Miller supposedly removed her shorts and underwear and that he tossed a beer bottle out of the window while they were stopped on the side of the road." Miller failed to establish prejudice as he "presented no evidence . . . that the car seat could reliably be tested for the presence of urine after trial counsel appeared in the case, more than a year and a half after the incident." And, even if testing were possible and supported Miller's claim, "it would only undermine one aspect of the victim's version of events," which version was supported by other evidence.