Case Law Update
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Supreme Court of Florida

Nixon v. State, SC20-48 (Aug. 26, 2021)

The Supreme Court affirmed an order denying a postconviction motion in which Nixon challenged his death sentence. He raised a claim of intellectual disability and ineligibility for the death penalty, and a claim based on Hurst v. Florida and Hurst v. State.

The trial court conducted an evidentiary hearing on the claim of intellectual disability and heard testimony regarding a range of multiple IQ test scores from 67 – 88. The evidentiary hearing had been held on a prior mandate from the Florida Supreme Court, directing the trial court to reevaluate the issue of intellectual disability in light of Hall v. Florida, 572 U.S. 701 (2014). However, the Florida Supreme Court, in 2020, in Phillips v. State, 299 So. 3d 1013 (Fla. 2020), receded from an earlier decision and held that Hall did not apply retroactively. As a result, Nixon was not entitled to reconsideration of whether he was intellectually disabled.

Nixon was not entitled to relief under the Hurst decisions because his death sentences were final prior to the Supreme Court's 2002 decision in Ring v. Arizona.

In Re: Amendments to Florida rule of Criminal Procedure 3.212, SC21-7 (Aug. 26, 2021)

Rule 3.212 was amended in order to comply with Jackson v. Indiana, 406 U.S. 715 (1972), as applied in Schofield v. Judd, 268 So. 3d 890 (Fla. 2d DCA 2019). The amendments specify "that a criminal defendant who is not competent to proceed and who cannot be restored to competency within the reasonably foreseeable future must be released from custody or the State must initiate civil commitment proceedings."

Hilton v. State, SC19-373, SC19-1766 (Aug. 26, 2021)

The Supreme Court affirmed the denial of a Rule 3.851 motion, and denied a habeas corpus petition.

Although trial counsel failed to present available mitigating evidence at the penalty phase of a capital trial, counsel was not ineffective. The sentencing court had found one statutory mitigator and eight nonstatutory mitigators. It could not be said that the "presentation of further mitigation would have altered Hilton's resulting sentence. . . ." Additionally, counsel "made a strategic decision not to present [the mitigation] to the jury because it could have bolstered a negative view of Hilton."

A claim of ineffective assistance due to "disarray and division among" defense counsel failed because of the absence of "specific deficient acts that present a reasonable probability of affecting the outcome of [the] case." The only specific incident alleged arose because the State failed to disclose an officer on its witness list, resulting in surprise by defense counsel at the testimony. Hilton did "not detail specifically how additional preparation would have enabled trial counsel to challenge this incriminating testimony in a more effective manner."

There was no Hurst error because Hilton had both a prior conviction for a murder in Georgia and a contemporaneous felony conviction for kidnapping. Thus, "a unanimous jury finding [as to those violent felonies] establishes the existence of at least one statutory aggravating circumstance beyond a reasonable doubt."

Counsel could not be ineffective for failing to present a meritless argument "that mentally ill inmates can never be executed."

Counsel was not ineffective for failing to preserve for appeal the denial of a cause challenge. "Hilton fails to identify a specific cause challenge that counsel should have preserved."

Appellate counsel from the direct appeal was not ineffective for failing to appeal the denial of a motion for a change of venue. Hilton "does not articulate any specific biased juror and, therefore, does not offer specific allegations of deficient performance. Furthermore, Hilton has not demonstrated that any jurors who may have ben biased were not properly rehabilitated. Moreover, Hilton fails to specify how the denial of the change of venue motion affected the outcome of his case."

Appellate counsel was not ineffective for failing to raise a claim of judicial bias based on denigration of trial counsel. Although trial counsel moved for a mistrial, counsel did not file a motion to disqualify, and, absent a motion to disqualify, the claim of judicial bias would have been procedurally barred on direct appeal.

Appellate counsel was not ineffective for failing to present arguments regarding the denial of cause challenges. The claim was procedurally barred because it had already been raised and denied in a rule 3.851 motion, where counsel was faulted for not preserving the challenges.

Appellate counsel was not ineffective for failing to argue that the trial court erred in denying a motion to strike the jury panel because of exposure to a newspaper article read aloud by one potential juror. The claim was not preserved for appellate review. Preservation would have required a contemporaneous objection when the issue arose and a second objection prior to the swearing of the jury.

Baptiste v. State, SC20-1083 (Aug. 26, 2021)

The Supreme Court addressed a conflict between the Third and Fourth Districts, turning on "whether a jury charge, requested by defense counsel but argued on appeal to be coercive, is reviewable for fundamental error." The Supreme Court agreed with the Third District "that the invited error precludes review."

After an Allen charge was given, the jury reached a verdict. During polling of the jury, one juror denied agreeing with the verdict. After a recess, "the defense requested that the jury be sent a note instructing them to continue deliberating, along with the jury instructions and a new verdict form." The judge rejected that, as it did not intend for the jury to deliberate further. The judge decided to instruct "the jury solely to memorialize on a new form what their verdict was, if they had one. Defense counsel replied, 'that's fine.' The court again asked counsel if the parties were in agreement, and both responded affirmatively." The jury was so instructed and completed a new verdict form which reflected a unanimous verdict for lesser included offenses and a firearm offense.

Merely acquiescing to an incorrect instruction constitutes a failure to preserve, but does not preclude fundamental-error review. Defense counsel in this case did not that merely acquiesce. Counsel proposed his own, "arguably even more coercive" charge that would have called for further deliberations. Counsel thus invited the alleged error.

Eleventh Circuit Court of Appeals

Hayes v. Secretary, Florida Department of Corrections, 19-10856 (Aug. 25, 2021)

Hayes was convicted for attempted first-degree murder with a deadly weapon and armed trespassing. The federal district court granted his habeas corpus petition, finding that counsel was ineffective "by withdrawing an insanity defense on the first day of trial." The Eleventh Circuit reversed, concluding, on the basis of "*Knowles v. Mirzayance*, 556 U.S. 111, 127-28 (2009), that the district court applied an incorrect prejudice standard in analyzing Mr. Hayes' ineffectiveness claim."

Prior to trial, Hayes had been deemed incompetent to proceed to trial, based on mental illness, for a period of time. The state court record suggested that, at the time of the announcement of the withdrawal of the insanity defense, counsel was following Mr. Hayes' wishes, although there was nothing in the record "indicating that counsel thoroughly discussed that decision with Mr. Hayes." As a result, when the issue first reached Florida's Second District Court of Appeal, that court remanded the case for an evidentiary hearing on the issue of ineffective assistance.

At the state court evidentiary hearing, trial counsel noted his concerns "about Mr. Hayes' mental capacity throughout the case." He stated that the decision to abandon the insanity defense, at Hayes' request, "was a tactical one." "Counsel explained that he had an on-the-record colloquy with Mr. Hayes and the trial court during which Mr. Hayes expressed his desire not to pursue a defense of not guilty be reason of insanity." Prior to trial, at least one expert had concluded that Mayes "might have been insane at the time of the commission" of the offenses. Hayes did not testify at the evidentiary hearing.

When the federal district court granted relief, it noted that although trial counsel had referenced on-the-record colloquies, neither they, nor a similarly-referenced letter, contained discussions about the withdrawal of the insanity defense. The district court also concluded that defense counsel did not seek any evaluation as to sanity at the time of the offense. In addition to finding counsel deficient, the district court found prejudice because "an insanity theory was 'likely [his] only viable defense.'"

In the Knowles case, the Supreme Court concluded that where an insanity defense was abandoned by counsel, "even where no other viable defenses exist, a defendant must still show 'a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.'" When that standard was applied, the Eleventh Circuit concluded that the district court never analyzed that issue. The Court then conducted its own prejudice analysis and concluded that Hayes did not carry his burden of demonstrating prejudice.

The Court first noted the existing evidence of mental illness, including at the time of the offenses, and it was substantial. Among other things, Hayes had a history of speaking with himself, hearing voices, using headphones while sleeping to drown out those voices, "wanting to see a dead person, sitting in the dark and isolating himself, and crying spontaneously." There was also post-arrest evidence of mental health issues, including incompetency, with a diagnosis that Hayes was probably "mentally ill," including an opinion that suggested psychosis leading up to the offenses, and the possibility of either a substance induced psychotic disorder of early signs of schizophrenia. Evidence of mental illness had also been introduced by successor counsel at the sentencing hearing. None of this evidence, however, addressed the legal issue of insanity; it was all related to competence to stand trial, which is a distinctly different issue. When all of this evidence was considered by the Eleventh Circuit, it concluded, largely because it addressed competency and not insanity, that Hayes did not demonstrate a reasonable probability that an insanity defense would have been successful at trial.

First District Court of Appeal

May v. State, 1D18-5153 (Aug. 26, 2021)

The First District affirmed convictions for fraud and racketeering and addressed three evidentiary issues.

The trial court did not err in excluding testimony from a defense expert. Engaging in Daubert analysis, the First District concluded that the expert, Magill, "did not use a reliable method." The defendant was the chief executive of a management company which contracted with charter schools for the acquisition of products for the schools with school funds. The State contended that May directed rebates to himself. The case involved accounting issues, as the funds at issue were commingled with other funds. The defense expert proffered that he engaged in a tracing of the funds. When asked for authoritative support for his method of tracing, he responded that "I would have to put it together and basically you know, even as evidence here, you guys would have to be trained or go to a class in accounting to even understand it." Defense counsel contended that the expert was applying the

"lowest intermediate balance rule" (LIBR), which "assumes that 'bad money' sits in the account until the 'good money' runs out."

Although the State conceded that the LIBR method was reasonable, the First District concluded that "Magill created his own method." The expert asserted that he applied generally accepted accounting principles and a reasonableness test, but did not explain the reasonableness test that he was applying or why it negated the analysis of the State's expert. The expert was repeatedly pressed to clarify his methodology, but the First District found that those explanations just led to "more confusion."

The trial court limited the defense's Daubert proffer to one hour, and the defense argued on appeal that this limit was an abuse of discretion. The First District disagreed. "Magill gave enough testimony in the allotted time to allow for sufficient review in this appeal of the admissibility of Magill's testimony under the *Daubert* standard." And, Magill did not need the full day which the defense, at one point, sought. Although the trial court limited the defense to one hour, "the proffer went well beyond the one-hour time limit," as Magill's testimony lasted about three hours and the court "never cut off the proffer. Rather, it gave defense counsel multiple chances to elicit further testimony from Magill." Finally, the defense did not demonstrate, on appeal, what testimony was left out, or how it would have made a difference.

Finally, there was no abuse of discretion in excluding proffered audit reports. The defense witness "admitted the audits would not have detected the alleged fraud." As a result, the reports were not relevant. Mays was attempted to "show that he was subject to oversight and that he loaned money to the schools." Mays, however, drew "no connection from evidence that he loaned money to the schools to any offense alleged by the State."

State v. Johnson, 1D20-2649 (Aug. 26, 2021)

The First District reversed the trial court's order discharging Johnson based on the failure to file an information within 175 days of arrest. The Court's opinion was based on the Florida Supreme Court's administrative orders regarding the tolling of time during the Covid-19 pandemic and the First District briefly reiterated the holding from its previous decision in Smith v. State, 310 So. 3d 1101 (Fla. 1st DCA 2020), "that the supreme court's administrative orders suspended all time periods pertaining to the speedy trial procedure, including the time for the State to file or amend an information."

Second District Court of Appeal

A.C. v. State, 2D18-1643 (Aug. 27, 2021)

The Second District reversed for a new restitution hearing. The trial court failed to make the required findings as to what A.C. or her parent or guardian could reasonably be expected to pay. The issue, although not preserved during the original trial court restitution proceedings, was adequately preserved for appellate review when raised in a rule 8.135(b)(2) motion, during the pendency of the direct appeal.

Third District Court of Appeal

Seme v. State, 3D21-870 (Aug. 25, 2021)

The Third District affirmed the denial of a petition seeking leave to file a belated Rule 3.850 motion. The petition in the trial court alleged that counsel retained by Seme had been negligent. Seme's trial court petition was time-barred.

Seme alleged that he retained counsel in February 2016 to file a Rule 3.850 motion based on newly discovered evidence. Counsel filed the motion in April 2018, alleging that the new evidence was discovered in March 2015. As the motion from counsel was filed more than three years after the evidence was allegedly discovered, it was untimely, as a motion alleging newly discovered evidence must be filed within two years of the time new facts are discovered. And, the "motion failed to set forth any reason why it was filed more than two years" later. The order denying that 3.850 motion was subsequently affirmed by the third District.

One year after the Third District affirmed the denial of the 3.850 motion, Seme filed his petition seeking leave to file a belated Rule 3.850 motion. This was based on prior postconviction counsel's failure to file the motion alleging newly discovered evidence in a timely manner. The Third District concluded that this petition was untimely filed. While leave for a belated rule 3.850 motion may be granted in some circumstances, including those were retained counsel, through negligence, failed to file the motion, a petition seeking to file such a belated motion must be filed within two years after the expiration of the time for filing a motion for postconviction relief. Here, the time for the filing of the Rule 3.850 motion would have expired in March 2017, and the time for filing the request for filing a belated motion would have expired two years later, in March 2019. As the petition to file a belated motion was not filed until January 2021, it was untimely.

Ramirez v. State, 3D21-0957 (Aug. 25, 2021)

Where a Rule 3.850 motion was denied as legally insufficient, the trial court should have granted the defendant leave to file an amended motion.

McGee v. State, 3D21-1213 (Aug. 25, 2021)

The trial court erred in denying a Rule 3.800(a) motion to correct an illegal sentence as a successive motion. The motion alleged that McGee did not have the requisite predicate convictions to support his designation as an habitual felony offender. The trial court treated the motion as a Rule 3.850 motion when denying it as successive. Successive motion bars generally do not apply to Rule 3.800(a) motions. The claim, however, had previously been raised in the trial court and rejected by both that court and the Third District in an earlier appeal. The doctrine of collateral estoppel or law of the case therefore precluded the same issue from being raised again.

Fifth District Court of Appeal

Schiedenhelm v. State, 5D21-1565 (Aug. 27, 2021)

The Fifth District reversed the summary denial of a Rule 3.801 motion seeking jail credit to provide the defendant with leave to amend her motion.

The defendant had been incarcerated in Sumter County on a second drug possession charge, while awaiting transfer to Citrus County for a pending probation violation proceeding. Any entitlement to additional jail credit on the probation violation case, for which she received a five-year sentence, hinged on whether the "Sumter County charges were resolved before her transfer to Citrus County, and her Citrus County detainer was the only reason Sumter County held her. . . ." The defendant was required, in her 3.801 motion, to provide information regarding "the existence of other criminal charges ending during [he] incarceration and the resolution of those charges." The failure to do that render the 3.801 motion legally insufficient, but the defendant was entitled to an opportunity to amend the motion pursuant to Rule 3.801(e).

Department of Children and Families v. State of Florida and Sonia Clay, 5D21-1596 (Aug. 27, 2021)

In 2016, when Clay entered a no-contest plea, she was ordered to pay move than $15,000 in restitution to DCF. At a subsequent probation violation hearing regarding an alleged failure to pay the full restitution, Clay established that she had actually paid almost $6,000 more. The trial court eventually, and on its own, entered a judgment against DCF for the excess payment.

In a petition for writ of certiorari, DCF alleged that the trial court lacked jurisdiction to enter such a judgment against DCF, which was a non-party in Clay's criminal case. The Fifth District agreed and quashed the monetary judgment.