Case Law Update
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Supreme Court of Florida

Dailey v. State, SC20-934, SC20-1529 (Sept. 23, 2021)

The Supreme Court affirmed the denial of a successive Rule 3,851 motion.

At trial, one prosecution witness testified that "his prior criminal charges were 'grand theft, counselor, not murder, not rape, no physical violence in my life.'" Dailey asserted a Giglio claim on the basis of notes from the prosecutor that tracked testimony of a detective and "had the words 'sex assault(s)' crossed-out in regard to [witness Skalnik's] criminal history." This was because the State, in 1982, filed a "no information" on a 1982 charge of lewd and lascivious assault on a child. This claim was correctly dismissed as untimely and procedurally barred as it was "merely a repackaging" of the Giglio claim asserted in a prior Rule 3.851 motion. Even if timely, it was without merit, "because information regarding Skalnik's lewd and lascivious assault charge is immaterial under *Giglio*." Skalnik's credibility had already been "compromised because the jury was aware that he had committed multiple crimes. And Skalnik was not the only witness against Dailey; two other inmates also testified that Dailey confessed to the murder." A recent "admission" by the trial prosecutor that the notes in question were his did not alter these conclusions. The prosecutor's statements were "not relevant to Defendant's guilt or innocence and would not be admissible at a new trial." They did not tend to prove or disprove "a fact material to whether Dailey committed first-degree murder."

In 2019, a second individual charged with the murder, Pearcy, executed a written statement saying that Dailey had nothing to do with the murder; that Pearcy committed the murder alone. The trial court conducted an evidentiary hearing on this claim. During a pre-hearing deposition, "Pearcy announced that he had nothing more to say and did not want to be brought back to court to testify in Dailey's case." He refused to testify at the evidentiary hearing. The trial court denied the claim of newly discovered evidence, in part, because "during the deposition Pearcy repeatedly denied the truthfulness of the statement in the declaration that he was responsible for the murder." And, in a prior postconviction proceeding, the Supreme Court had held that a prior affidavit of a similar nature would have been inadmissible hearsay at trial. The Supreme Court concurred with the trial court's rulings.

One Justice dissented based on Pearcy's statement because the evidence of guilt in this case was deemed to be important in a case where the State's evidence depended on testimony of jailhouse informants that lacked substantial independent corroborative evidence. The dissent further emphasized the 30 individuals who have been exonerated from death row.

State v. McKenzie, SC19-921 (Sept. 23, 2021)

The Supreme Court resolved a conflict between district courts of appeal and held that a circuit court "has jurisdiction to impose a sexual predator designation on an offender who qualifies under section 775.21, Florida Statutes (2018), the Florida Sexual Predators Act, when the sentencing court did not impose the designation at sentencing and the offender's sentence has been completed."

The Court emphasized "the supremacy-of-text principle" for interpreting the statute at issue, as the "words of a governing text are of paramount concern." After noting the individuals who qualified for such designation, the Court quoted the statutory language that the offender "shall be designated as a 'sexual predator.'" Although the statute included language that "the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator," this was deemed "simply one procedural mechanism designed to implement the Legislature's substantive policy of protecting the public from sexual predators." The Court rejected "the view that the absence of a mechanism in subparagraph (c) specifically addressing the type of error presented by this case – a failure to impose the required designation at sentencing – implies that the error is beyond subsequent remedy. An interpretation should not be imposed on the statutory text by implication when that interpretation contradicts the manifest purpose of the text as well as an unequivocal requirement stated in the text."

Three Justices dissented from the Court's opinion.

First District Court of Appeal

Robinson v. State, 1D20-17 (Sept. 22, 2021)

The First District affirmed convictions for possession of a firearm or ammunition by a convicted felon and possession of marijuana.

The State relied on a theory of constructive possession, and the Court rejected Robinson's argument that he was a "mere visitor." Robinson "spent the night alone with a female friend in a small bedroom containing a box of ammunition, eight marijuana joints, and an assault-style firearm. All of these items were in plain view: the marijuana in an ashtray on top of a TV directly beside the bedroom door, the ammunition on the windowsill directly over the head of the bed and within easy reach from the bed, and the firearm in an open closet. Appellant's driver's license was on the floor directly in front of the open closet and right beside the TV stand, close to a pair of shoes." "The State presented evidenced from which the jury could conclude that the contraband items were in plain view within the bedroom that Appellant and his friend exclusively occupied for the night. The possibility that others occupied the room on other nights is irrelevant. On these facts, the governing analysis is not that of a 'mere visitor' situation, but rather is a plain-view/joint-occupancy question."

Harris v. State, 1D20-589 (Sept. 22, 2021)

The First District affirmed the denial of a motion to withdraw guilty plea. The motion was filed prior to sentencing under Rule 3.170, Fla.R.Crim.P.

When a motion to withdraw plea is filed prior to sentencing, the judge has discretion to permit the withdrawal, but, on a showing of good cause, the court must permit the withdrawal. Harris sought the withdrawal based upon an alleged misunderstanding of counsel's explanation of ballistics evidence. The trial court entertained evidence on the motion and made a credibility determination, which the First District found was supported by the evidence. "Appellant's contention that his confusion regarding ballistics evidence was the deciding factor in his decision to plea – rather than the higher-degree-charge of felony murder which he acknowledged avoiding by virtue of his plea – stretches credulity. And his contention that he was mistaken is inconsistent with his previous confirmation that he had sufficient opportunity to confer with counsel."

A further challenge based on the prosecutor's alleged misstatement during the factual proffer regarding "trajectory analysis" inducing the plea was deemed "nonsensical considering Appellant's acknowledgment that he agreed to the plea prior to any statement being made."

Harris further argued that the trial court erred by failing to permit a defense expert to testify at sentencing as to the cause of death. The Court first noted that this would not affect the denial of the motion to withdraw plea; at most, the remedy

would be a new sentencing hearing. Regardless the trial court did not err because such testimony was deemed irrelevant to sentencing. The trial court had no discretion to "deviate from the agreed-upon term."

Wright v. State, 1D20-2455 (Sept. 22, 2021)

Although a pro se defendant already had a copy of the transcript of the plea hearing, he was entitled to obtain from the court reporter electronic records of that hearing, if they existed, in order to "check the accuracy of the transcript for alleged scrivener's omissions."

Kramer v. State, 1D20-3457 (Sept. 22, 2021)

The denial of a Rule 3.800(a) motion to correct illegal sentence was affirmed because the claims asserted were not cognizable in such a motion.

The noncognizable claims were that 1) "the trial court improperly considered an unsubstantiated allegation of capital sexual battery that was pending at the time in a separate criminal proceeding"; and 2) the 70-year sentence "constituted cruel and unusual punishment" because it was a de facto life sentence, grossly disproportionate to the third-degree felonies he was convicted of.

Kimble v. State, 1D20-3690 (Sept. 22, 2021)

The denial of a Rule 3.800(a) motion to correct illegal sentence was affirmed. A claim that a sentence was vindictive is not cognizable under Rule 3.800(a).

Hagins v. Inch, 1D21-135 (Sept. 22, 2021)

In affirming the dismissal of a mandamus petition in which Hagins sought additional gain-time, the Court addressed the prisoner mailbox rule. Although "Hagins certified that he placed the complaint in the hands of prison officials for filing on July 13, 2020," the first page of the complaint included an "initialed institutional mail stamp showing that Hagins "did not turn over the complaint to officials for mailing until July 15, 2020." That initialed date stamp prevailed over Hagins's certified date as the presumptive filing date.

Rich v. State, 1D21-578 (Sept. 22, 2021)

A Rule 3.801 motion seeking additional jail credit was correctly denied as untimely, as such motions must be filed within one year of the finality of the sentence.

Donovan v. State, 1D21-1819 (Sept. 22, 2021)

A petition alleging that postconviction appellate counsel was ineffective was dismissed. Fla.R.App.P. 9.141(d) authorizes petitions alleging ineffective assistance of appellate counsel from the direct appeal, not from postconviction appeals.

Second District Court of Appeal

Carrion v. State, 2D18-4289 (Sept. 22, 2021)

The Second District affirmed convictions for second-degree murder, aggravated manslaughter, and aggravated child abuse. In the only claim addressed on appeal, the Court found that although the judgment erred by not indicting that the defendant was found guilty by a jury, the issue was not preserved for appellate review. Although the apparent scrivener's error appeared on the written judgment of conviction, and not on the written sentence, the error was still one which should have been preserved through a Rule 3.800(b) motion prior to briefing on direct appeal. The Second District noted the court commentary to rule 3.800, which expressly referred to clerical or ministerial errors occurring in "the written sentence, judgment, or order of probation or restitution."

Third District Court of Appeal

Arce v. State, 3D20-511 9Sept. 22, 2021)

The inclusion on the sentencing scoresheet of 24 community sanction violation points for a new felony when the new felony was not the basis of a probation violation was erroneous. As the record did not conclusively show that the trial court would have imposed the same sentence despite the scoresheet error, a new sentencing hearing was required.

Fourth District Court of Appeal

State v. Delprete, 4D20-1680 (Sept. 22, 2021)

The trial court erred by granting a motion to dismiss an information which alleged one count of false insurance claim under section 817.234, Florida Statues (2016).

The trial court relied on factual allegations that the insurer, when paying a collision claim, relied on a police report which stated that the defendant had been driving at the time of the accident, as opposed to the defendant's misrepresentations, in which he claimed that he was not driving. Construing the statutory language, the Fourth District held that the statute does not include any "reliance" element – "whether justifiable or otherwise."

The trial court had also found the State's traverse insufficient. The traverse included what the trial court deemed to be one paragraph of disputed facts. The trial court found that irrelevant because of its own finding based on the undisputed fact regarding the insurer paying the claim without relying on the misrepresentation. As the trial court had erred in its statutory interpretation, the ensuing finding that the State's traverse was insufficient was likewise erroneous; the other facts disputed in the State's motion were relevant and compelled denial of the motion to dismiss.