Case Law Update
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Supreme Court of Florida

Noetzel v. State, SC20-466 (Nov. 10, 2021)

The Supreme Court affirmed a convictions for first-degree murder, attempted first-degree murder and other offenses, and the sentences, which included the death sentence for the first-degree murder. Prior to the trial, Noetzel waived his right to counsel, entered a guilty plea to the charged offenses, and proceeded to a bench trial for the penalty phase. Noetzel and a fellow prison inmate planned the murders of another inmate and a corrections officer – the inmate, based on their belief that he was a homosexual and a child molester; the officer because they disliked him. The officer survived the attack.

Noetzel, on appeal, challenged the trial court's initial ruling permitting him to represent himself. He argued that he made statements during the Faretta inquiry regarding drugs that he had been prescribed – a "psych med" for depression, and medication for chronic back pain – which he was not "taking at this moment." He further argued that the trial court did not adequately inquire into his competency at that time as a result of his references to those drugs. This argument intertwined different standards – competency to consult with counsel under Dusky v. United States; competency to waive counsel under Faretta v. California; and competency to conduct trial proceedings, which is noted to be a higher standard than that of Dusky.

As to the first of those standards, a competency inquiry was not required based on Noetzel's references to the drugs not being taken. When Noetzel made reference to those drugs, upon further inquiry, he advised the court that the medication did not 'positively or negatively affect his ability to understand, but rather, 'just kind of keeps [him] calm.'" He confirmed that he was "'fully capable' of understanding and comprehending 'everything' that the trial court was discussing with him." The trial court had also had the ability to observe Noetzel throughout numerous proceedings.

With respect to the Faretta inquiry for self-representation, Noetzel argued that the trial court should have inquired further as to his mental health status. The trial court had conducted a substantial inquiry which is detailed at length in the Court's opinion. In addition to significant inquiries regarding mental status, the Supreme

Court emphasized that there was nothing in the record to indicate that Noetzel did not understand his rights. Noetzel had explained that he was engaging in the waiver so that he could quickly enter his guilty plea and "streamline" the penalty phase as much as possible.

Finally, the Court discussed the competency standard of Fla.R.Crim.P. 3.111(d)(3), which permits, in appropriate cases, a trial court to proceed with counsel, if the accused suffers from severe mental illness even though competent to proceed under the general standard for competency. The Supreme Court did not address the question of whether this standard even applied to a guilty plea. There was nothing in the record that would suggest that Noetzel was unable to conduct trial proceedings. To the contrary, he filed numerous pro se motions, conducted cross-examination of the State's penalty-phase witnesses, objected to evidence proffered by the State, and gave a statement on his own behalf to the trial court.

Noetzel further argued that the trial court erred by permitting him to continue to represent himself at the final sentencing hearing, after the PSI, when he disclosed to the court that he had been diagnosed with paranoid schizophrenia at an unspecified time in the past. As this claim was not raised in the trial court, it was reviewed for fundamental error. In rejecting this claim, the Supreme Court emphasized the following: a competency hearing had been conducted prior to the sentencing proceeding; the alleged diagnosis preceded all of the trial court's interactions with the defendant; and there were no manifestations of mental illness during any of the in-court proceedings. The trial court had also renewed offers of counsel at new stages of the proceedings and had appointed standby counsel. Prior to the final hearing, the court had also conducted a "partial" inquiry under Faretta.

The Supreme Court also conducted a mandatory review of the guilty plea, which flows from that Court's duty to review the sufficiency of evidence for first-degree murder. In finding the plea to be knowing, intelligent and voluntary, the Court emphasized that the trial court had reviewed potential sentences, Noetzel's assertion that he had not been promised anything, his assertion that he had not been threatened, his statement that he was pleading guilty because he was guilty, and the State's proffer of the factual basis for the plea, to which Noetzel did not object.

Steiger v. State, SC20-1404 (Nov. 10, 2021)

The Supreme Court reviewed a conflict between the Second and Fourth District Courts of Appeal concerning "whether appellate courts may address the merits of unpreserved claims of ineffective assistance of trial counsel on direct

appeal." The Court held that "section 924.051(3), Florida Statutes (2020), which prohibits raising an unpreserved claim of error on direct appeal absent a showing of fundamental error, precludes appellate review of unpreserved claims of ineffective assistance of trial counsel on direct appeal. Such ineffective assistance of counsel claims may therefore only be raised on direct appeal in the context of fundamental error argument. Ineffective assistance of counsel claims relying upon the less-demanding *Strickland* standard are properly considered upon the filing of a legally sufficient postconviction motion in the trial court."

The Court's analysis was based largely on the statutory language of section 924.051(3). The Court further explained why the prejudice standard of Strickland is easier for a defendant to satisfy than the requirements of fundamental error. Prejudice under Strickland requires demonstration of "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Fundamental error is more difficult to establish because it requires that an "error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error."

While some appellate courts have previously addressed some unpreserved claims of ineffective assistance of trial counsel on direct appeal based on the conclusion that the ineffectiveness was apparent on the face of the record and that it would be a waste of judicial resources not to review the claim at that time, the Supreme Court rejected that theory because section 924.051(3) does not contain an "waste-of-judicial-resources exception, and we cannot rewrite the statute." The Court, however, referred the matter to the Criminal Procedure Rules Committee to consider whether a rule, comparable to Rule 3.800(b) should be adopted, to permit such claims to be asserted on direct appeal prior to the filing of the initial brief of appellant.

First District Court of Appeal

Hicks v. State, 1D18-5325 (Nov. 10, 2021)

The First District issued a new opinion on rehearing, affirming a conviction for capital sexual battery and reversing the imposition of a fine.

The night prior to the start of the first jury trial, the State emailed defense counsel regarding a new witness, Ms. White, whose anticipated testimony would contradict the defense that the defendant "never went to the victim's room because

he and his girlfriend, Ms. Jackson, spent the night together on an air mattress in the living room." A discovery issue was then addressed prior to the jury being sworn, and the trial court concluded that the State's omission was inadvertent. The inquiry could not be completed at that time because the State had not yet located the witness and was unsure whether she would testify at trial. The witness was located during the middle of the trial and the State announced that she would testify as a rebuttal witness the next day. Defense counsel then requested that the witness be excluded because of the untimely disclosure, adding that there was a potential conflict as that witness was represented by the Public Defender's Office. After a full Richardson hearing regarding the discovery violation, the court declared a mistrial. Ms. White then testified at the second trial.

On appeal from the conviction after the second trial, Hicks argued that there was no manifest necessity for the granting of the mistrial and that the trial court failed to consider other alternatives, such as the exclusion of the testimony of witness White. The First District disagreed, as the manifest necessity requirement was satisfied. The trial court did consider alternatives. Defense counsel rejected the offer of a continuance. And, as the failure to previously disclose Ms. White had been found to be inadvertent, the exclusion of Ms. White as a sanction would have been too severe.

The assessment of a fine was reversed because section 775.083, Florida Statutes (2016), prohibits the imposition of a fine for a capital felony.

Smith v. State, 1D20-2969 (Nov. 10, 2021)

The First District affirmed a revocation of probation. The revocation was based on multiple violations. Without detailing the evidence, the First District noted that the evidence was sufficient with respect to all violations except for the failure to pay restitution and drug-testing fees, as to which the trial court failed to make the required determinations regarding Smith's ability to pay and the willfulness of the failure to pay. However, it was clear from the record that the primary reason for the revocation was that Smith had absconded from probation for the second time and that the trial court would have revoked probation on that basis regardless of Smith's failure to comply with monetary obligations.

Second District Court of Appeal

State v. Downs, 2D20-1320 (Nov. 12, 2021)

The State appealed the trial court's order granting a motion for postconviction relief and the Second District reversed and remanded for further proceedings for the trial court to "make findings of fact and draw legal conclusions regarding Downs' claims."

The Rule 3.850 motion at issue was the second such motion, and it presented a claim of newly discovered evidence, consisting of an affidavit from a judge who stated that "he overheard a plea offer in open court on the day of trial which Downs' trial counsel did not convey to Downs and that when Judge Jacobus spoke with jurors after trial, they were offended by the conduct of Downs' trial counsel." The trial court summarily granted the motion without an evidentiary hearing, but did not set forth any findings of fact or legal conclusions. The trial court's order stated only that the defendant did not "receive a fair trial and is entitled to relief." "'[W]hen a lower court makes insufficient findings of fact, we remand for the lower court to make necessary findings because we are precluded from making factual findings in the first instance.'" The remand to the trial court did not expressly mandate that the trial court conduct an evidentiary hearing.

Harden v. State, 2D20-2936 (Nov. 10, 2021)

The Second District affirmed a conviction and sentence but remanded the case for a corrected sentencing scoresheet. The inclusion of eight points on the scoresheet for victim injury for penetration was erroneous. Harden entered a plea to a charge that "alleged union and/or penetration," and "victim injury points could not be assessed absent a specific finding of penetration or Mr. Harden stipulating to the fact of penetration."

Harden was not entitled to a new sentencing hearing, however, because "the record conclusively shows that the trial court would have imposed the same sentence regardless of the scoresheet error."

Third District Court of Appeal

Lola v. State, 3D20-1812 (Nov. 10, 2021)

Lola appealed from a non-appealable order appointing the Public Defender to represent him. After the appeal was filed, the trial court conducted hearings which resulted in Lola being permitted to represent himself. Lola subsequently requested the appointment of counsel, and the trial court complied. Lola then proceeded with his appeal, submitting a brief raising numerous issues. The Third District treated the appeal as a petition for a writ of either habeas corpus or prohibition and dismissed the petition, as Lola was now represented by counsel, and the Florida Supreme Court has previously held that a defendant in a criminal case may not pursue an original writ in an appellate court when that defendant is represented by counsel.

Montoya-Martinez v. State, 3D21-0415 (Nov. 10, 2021)

The Third District affirmed a conviction for carrying a concealed weapon without a permit. The appeal was taken after the defendant entered a guilty plea and reserved the right to appeal the denial of a motion to dismiss.

The trial court did not err in denying the sworn motion to dismiss. The question of whether a weapon is concealed is ordinarily a question for the trier of fact, even though it may sometimes be determined as a matter of law through a sworn motion to dismiss. In this case, the firearm was "wedged between the seat and the console and was obscured from the officer's view by Montoya's right thigh. The officer was only able to see the firearm after Montoya had exited the driver's seat. Montoya immediately told the officers that he had the firearm."

Bruce v. State, 3D21-0925 (Nov. 10, 2021)

The Third District affirmed the denial of Bruce's application for review of sentences for juvenile offenders under section 921.1402, Florida Statutes. Bruce was a juvenile at the time of the commission of the offense in 1972, and he was sentenced to life with parole eligibility after 25 years. He had actually been released on parole on a few occasions, but was reincarcerated after parole revocations. The trial court concluded, and the Third District agreed, that Bruce "received a meaningful opportunity to obtain release as required under the case law."

Nelson v. State, 3D21-1655 (Nov. 10, 2021)

The State issued a subpoena to Nelson and Nelson's former counsel, seeking the production of "audio and video recordings, billing and payment records, and telephone numbers," in addition to seeking to depose both. The trial court denied motions for protective orders and to quash the subpoenas. Nelson and former counsel Saiz sought certiorari review in the Third District, arguing that compliance with the subpoena would invade attorney-client and work-product privileges. The Third District granted the petition in part, with respect to "deposition inquiry into communications protected by the attorney-client privilege."

The subpoena and subsequent motions and petitions arose out of the following facts: "After Nelson was jailed for armed robbery and detained without bond, the alleged victim in the case was murdered in front of her three-year old daughter. Before news sources reported the crime, Saiz contacted the prosecutor on the case and informed him the victim was dead. Saiz told the prosecutor he had received the information from Nelson, who had purportedly informed Saiz he learned of the murder from a news outlet."

With respect to the recordings, records and phone numbers, the Third District found no error. They were, at best, "fact work product," "and the State has made a reasonable showing of need and inability to obtain the substantial equivalent without undue hardship." With respect to the deposition, and potentially protected communications between attorney and client, the Court observed that the attorney could not unilaterally waive the privilege. The State's proffer in the case had not demonstrated that Nelson, by word or conduct, had relinquished the right to invoke confidentiality.

Fourth District Court of Appeal

Bell v. State, 4D19-3463 (Nov. 10, 2021)

In an appeal from convictions and sentences for DUI manslaughter, DUI with property damage, and misdemeanor driving with a suspended license, the Fourth District affirmed the convictions, but reversed the sentences due to a failure to include a probationary period and the completion of a substance abuse course.

Bell was adjudicated guilty and sentenced to 15 years for the manslaughter, one year for each of the two DUI/property damage offenses, and 60 days for driving

with a suspended license. One of the DUI property damage sentences ran consecutively to the manslaughter sentence.

Section 316.193(5), Florida Statutes (2019), provides that the "court shall place all offenders convicted of violating this section on monthly reporting probation and shall require the completion of a substance abuse course." All three of the DUI convictions were for offenses of section 316.193, and that sentencing provision was mandatory. Bell had already received the statutory maximum for each of the DUI offenses and resentencing was required to include the probationary period, which would necessarily compel a reduction of the period of incarceration, as the combined periods of incarceration and probation may not exceed the statutory maximum penalty for the offense.

The Fourth District further certified the following question to the Supreme Court as one of great public importance:

> DOES SECTION 316.193(5)'S REQUIREMENTS OF "MONTHLY REPORTING PROBATION" AND COMPLETION OF A SUBSTANCE ABUSE COURSE VITIATE A TRIAL COURT'S DISCRETION TO IMPOSE THE MAXIMUM PRISON SENTENCE PROVIDED IN SECTION 775.082, FLORIDA STATUTES?

D.L. v. State, 4D20-1848, et al. (Nov. 10, 2021)

The disposition order in a juvenile proceeding was reversed because the order placed D.L. in a high-risk secure residential program "when his underlying crimes were misdemeanors and his probation violations were technical in nature." Under section 985.441(2), Florida Statutes, the restrictiveness level under those circumstances is limited to "minimum-risk nonresidential." There are exceptions for nonsecure residential commitment, but they were not applicable.

The State sought to uphold the secure residential commitment based on the commission of new law violations by testing positive for marijuana and curfew violations. The Fourth District rejected those arguments. A positive drug-test result qualifies by statute as a "low risk violation," and a low-risk violation, in and of itself, under section 948.06(2)(f), Florida Statutes, warrants only a continuation or modification of probation. And, while a curfew violation, under section 877.22(1)(a), Florida Statutes, may constitute a new law violation if the violation is

committed between 11:00 p.m. and 5:00 a.m., Sunday through Thursday, the affidavit of violation in this case alleged that D.L. violated the standard condition of probation, from 8:00 p.m. through 6:00 a.m., and did not charge a violation of section 877.22(1)(a).

The Fourth District also remanded for correction of several scriveners errors and because of the failure of the trial court to specify the probation conditions that were violated in a written order.

Humphrey v. State, 4D21-1822 (Nov. 10, 2021)

Humphrey appealed the dismissal of motions under Rules 3.800(a), 3.800(c) and 3.850. The Fourth District affirmed as to the 3.800(a) and 3.850 motions, treating the appeal of the Rule 3.800(c) order as a petition for writ of certiorari and then granting relief because the 3.800(c) motion had been erroneously denied in the trial court as a successive motion.

The Rule 3.850 motion was untimely. It was filed more than two years after the finality of the convictions and sentences and Humphrey did not explain why he could not have raised the claims in his prior 3.850 motion. Although he had obtained a resentencing on one of his convictions, that did not reset the two-year clock for the claims that he asserted in the 3.850 motion, as those claims arose from the original trial proceedings.

Although the trial court erred in treating the 3.800(a) motion as a successive motion because there is no successive motion bar under Rule 3.800(a), the claims asserted were otherwise without merit and were not addressed by the Fourth District.

A Rule 3.800(c) motion for a discretionary reduction of sentence is not appealable. That rule does not contain a successive motion bar and the trial court erred in dismissing it as successive. As to the new sentence that had been imposed for one of the offenses on resentencing, the case was remanded for the trial court to entertain the 3.800(c) motion.

Fifth District Court of Appeal

Dickerson v. State, 5D21-1062 (Nov. 12, 2021)

The Fifth District affirmed the denial of a Rule 3.850 motion, but struck language in the trial court's order regarding gain time and the Department of

Corrections. The trial court's order had stated that Dickerson was "not to receive credit for time out of facility awaiting this hearing." "Only DOC is responsible for calculating and awarding credit for time served after imposition of a sentence, not the trial court." Nor could the sentencing court "direct DOC to discipline Dickerson by forfeiting his gain time or denying him credit for time served in jail awaiting the hearing; this violated the separation of powers doctrine."