Case Law Update
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Eleventh Circuit Court of Appeals

Telcy v. United States, 19-13029(Dec. 10, 2021)

The Eleventh Circuit affirmed the district court's order dismissing a habeas corpus petition under 28 U.S.C. s. 2255 as successive.

Although a prior petition under section 2255 had been denied on the merits, Telcy filed a subsequent motion for sentence reduction under section 404(b) of the First Step Act of 2018, and the district court granted relief and reduced the sentence. Telcy subsequently filed his second habeas petition under section 2255 and argued that it did not qualify as a prohibited successive petition because the reduced sentence under the First Step Act constituted a new judgment, and that as a result, the second section 2255 petition was no longer challenging the same, original judgment and sentence.

The Eleventh Circuit disagreed and held that the sentence reduction under the First Step Act did "not constitute a new judgment for purposes of AEDPA's bar on second or successive habeas petitions," and Telcy was therefore "required to obtain authorization from this Court before filing his second s. 2255 petition." Relying on Dillon v. United States, 560 U.S. 817 (2010), the Eleventh Circuit concluded that the reduced sentence under the First Step Act was a mere sentence reduction and not a "full resentencing." As such, it did not constitute a new judgment for section 2255 purposes.

Relevant factors leading up to this conclusion included the following: 1) the First Step Act "authorizes district courts to reduce sentences only in certain circumstances"; 2) the First Step Act does not mandate consideration of the wide array of sentencing factors that would be considered at an original sentencing hearing; and 3) the First Step Act proceeding does not require the presence of a defendant as would a de novo resentencing.

First District Court of Appeal

Hall v. State, 1D20-1089 (Dec. 8, 2021)

Hall sought resentencing under the juvenile life sentence decisions of Miller v. Alabama and Atwell v. State. The trial court denied the motion because the Florida Supreme Court overruled Atwell in State v. Michel and Franklin v. State, decisions which concluded that a sentence of life in prison with parole eligibility after 25 years did not qualify as a life sentence under Miller. On appeal, Hall argued that "the trial court could not deny his motion because it had already granted resentencing, prior to the *Michel* and *Franklin* decisions, by its order appointing counsel to him for resentencing." The First District rejected that argument on the basis of its own prior decision in Smith v. State, 299 So. 3d 536 (Fla. 1st DCA 2020), which held that the order appointing postconviction counsel for resentencing was neither a final order on the postconviction motion granting resentencing nor its functional equivalent. Unlike the situation in State v. Jackson, 306 So. 3d 936 (Fla. 2020), the order at issue in this case did not "vacate the previously-imposed sentence."

Second District Court of Appeal

Larson v. State, 2D21-2247 (Dec. 10, 2021)

The trial court erred in dismissing a Rule 3.850 motion with prejudice. After filing the Rule 3.850 motion, Larson filed a motion to withdraw it, while reserving the right to raise one of its grounds again after consulting with counsel. The trial court granted the motion to withdraw but dismissed the original motion with prejudice. Generally, a "'postconviction motion should not be dismissed with prejudice when the defendant volunteers to dismiss it unless there is prejudice to the state or some justification for resolving the motion on the merits.'"

Swain v. State, 2D19-4529 (Dec. 8, 2021)

The Second District reversed an order summarily dismissing a Rule 3.850 motion.

The trial court dismissed the motion as untimely. Swain relied on existing case law to argue that the two-year time period for filing the motion was tolled during his incarceration in a federal prison and that he did not have access to Florida legal materials. The trial court distinguished the prior case, finding that since Swain's

incarceration was in a federal prison in Florida, he did have access to Florida legal materials while incarcerated, as evidenced by his ability to write to the trial court within the two-year period.

The Second District found that the records attached to the trial court's order did not support that conclusion, as Swain's written submissions to the trial court did not cite and Florida cases, rules or statutes. On remand, Swain would have "the opportunity to establish predicate facts to avoid the time bar. . . ."

Third District Court of Appeal

Johnson v. State, 3D21-2096 (Dec. 8, 2021)

In a brief opinion regarding a Stand Your Ground issue, the Third District granted a certiorari petition on the basis of its own recent decision in Casanova v. State.

The trial court denied the pretrial motion to dismiss "without reaching the merits because it was not sworn to by a person with personal knowledge or otherwise supported by evidence to establish the facts as alleged in the motion." The Court previously held, in Casanova, that "a defendant's motion to dismiss under Florida's Stand Your ground law can establish a prima facie claim of self-defense immunity from prosecution even though the motion to dismiss is not sworn to by someone with personal knowledge or supported by evidence or testimony establishing the facts in the motion to dismiss."

Fourth District Court of Appeal

Scott v. State, 4D19-3749, et al. (Dec. 8, 2021)

The Fourth District affirmed a conviction for second-degree murder, but reversed an order of restitution and mandated an evidentiary hearing.

First, the Court found that the evidence was sufficient to support the conviction. "While the evidence showing that appellant was the victim's killer was circumstantial, the State put the evidence together like pieces of a puzzle, not by a stacking of inferences." The victim had been dropped off at home by her former boyfriend around 4:00 a.m. and was found dead, the next morning, in her backyard, "having been dragged beneath a tree." DNA evidence of the victim's blood was found on the murder weapon, a concrete block, "that also had DNA consistent with

appellant's DNA. The victim's blood was also found on appellant and his clothing" Other evidence included texts between Scott and the victim, "showing appellant's anger and jealously." The State also created a timeline for the relevant hours and also relied on cell site data showing the locations of the phones of Scott and the victim.

The trial court did not err in admitting into evidence a "saw found in a tree in the empty lot where the bloody brick, the suspected murder weapon, was found." Scott's fingerprint was found on the saw. Although it was not the murder weapon, the fingerprint on it "placed him in the area at some point, when he said he had never been in the area." Alternatively, under the facts of the case, if irrelevant, it was harmless.

The "trial court did not err in denying admission of a statement relayed to police during their investigation." "The evidence sought to be admitted of another possible perpetrator was . . . double hearsay. The victim had told her mother and aunt that her former boyfriend had threatened to kill her and 'leave her dead body at the doorstep' which the mother relayed to the police." Contrary to defense counsel's argument, this was not admissible with respect to showing the declarant's state of mind, as that was not relevant in this case. And, defense counsel was able to develop the theory that the police did a poor investigation through cross-examination of the police and the former boyfriend, who testified.

The restitution order, which was entered the same day as the sentence, was reversed because there was no discussion of it at sentencing and the defendant "lacked any notice or opportunity to be heard."

Fifth District Court of Appeal

Schrager v. State, 5D21-15 (Dec. 10, 2021)

Discretionary fines and surcharges that were not orally pronounced were stricken and could not be reimposed on remand because they "would result in a greater financial obligation than orally pronounced." Prosecution costs of $100 in each of three separate cases were reversed and reduced to $50, the statutory minimum, because the State did not request an amount greater than the statutory minimum.