Case Law Update
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Supreme Court of Florida

Davis v. State, SC19-716 (Dec. 2, 2021)

The Supreme Court addressed a certified question from the First District Court of Appeal, as rephrased by the Supreme Court:

> Does a trial court, when imposing a sentence on a defendant who has voluntarily chosen to allocute and maintain his innocence at the sentencing hearing, violate the defendant's due process rights by considering the defendant's failure to take responsibility for is action?

Davis argued that "consideration by a trial court at sentencing of a defendant's failure to take responsibility for his or her actions violates due process 'because it infringes on the defendant's right to testify and not incriminate himself.'" The Supreme Court disagreed. The Court emphasized the following factors. First, "[w]hether a defendant says nothing at sentencing or takes full responsibility and is able to show that he is a pillar of the community, a judge retains the discretion to impose the maximum sentence." Second, "while a defendant does have the right to maintain his innocence by pleading not guilty and going to trial, and the right to remain silent, Davis chose to voluntarily allocute at his sentencing and thus waived his right to remain silent. And because Davis waived the right to maintain his silence, the trial court did not violate Davis's right to due process by considering the words that Davis voluntarily offered in imposing a sentence."

Davis could have "allocuted without voicing his disagreement with the verdict, blaming the driver, the police, his lawyer, and the trial court for his conviction. . . ." However, when he made statements as to the foregoing, the "trial court was under no obligation to ignore such statements and did not err in considering those statements in imposing the legal sentence here."

Two justices dissented, primarily on the basis of article I, section 9 of the Florida Constitution.

First District Court of Appeal

Lynch v. Florida Department of Law Enforcement, 1D19-4217 (Dec. 1, 2021)

FDLE erred in concluding that Lynch was prohibited from purchasing a firearm. A background check had disclosed that Lynch either had mental incompetency records or a court-ordered substance abuse treatment record. Lynch sought administrative review of that finding, contesting it. FDLE sought to place the burden on Lynch to obtain relevant documentation from the State of New York to support his contention. FDLE relied on the NICS background check. The First District reiterated its prior holding that "NICS results alone cannot take away a person's constitutional right to possess or purchase a firearm. . . . It is the underlying records that determine whether the person's constitutional right to possess or purchase a firearm has been taken away." It was "incumbent upon FDLE to request the underlying records 'to help determine whether the potential buyer . . . is the same person as the subject of the record.'"

Stancil v. State, 1D20-2564 (Dec. 1, 2021)

The First District granted the State's cross-appeal and reversed a Rule 3.800(b) order regarding costs and fees.

The trial court imposed costs, fees and fines after the original plea agreement. Additional costs and fees were imposed after the subsequent revocation of probation. In the Rule 3.800(b) motion during the appeal from the revocation of probation, the defendant challenged this second assessment of costs and fees, construing the Fifth District decision in Chivese v. State, 295 So. 3d 324 (Fla. 5th DCA 2020), as prohibiting this second assessment. The trial court agreed with the defendant's motion.

The State appealed and the First District held that the imposition of the second set of fees was required by statutory language, which expressly provided for such fees in both criminal cases and violation of probation or community control cases. Sections 938.27, 938.29, Florida Statutes. Although the State's cross-appeal was granted, the First District did not disagree with Chivese. That case involved distinctive facts and had resulted in two cost judgments that were cumulative and duplicative.

Kitt v. State, 1D21-0868 (Dec. 1, 2021)

The First District affirmed the summary denial of a Rule 3.850 motion. The motion set forth five claims of ineffective assistance of counsel and one claim of newly discovered evidence.

Counsel was not ineffective for failing to strike several jurors. The record reflected that Kitt consulted with counsel and stated that he was satisfied with the jury that had been selected. He "cannot now go behind these sworn representation to seek postconviction relief."

Counsel was not ineffective for failing to challenge three comments by the prosecutor, as none of them constituted improper golden rule arguments; they did not invite "the jurors to place themselves in the position of the victim, the victim's fiancée, or the children." In the first statement, the prosecutor addressed the evidence of the home invasion and then added: "You can imagine how the children were reacting." In context, this "encouraged the jurors to picture the scene, not put themselves in the children's shoes." The other comments about the "reactions of the children and the fiancée after the men left were made in the context of explaining the delay between the offenses and the fiancée calling 911." "The prosecutor was conveying the difficulty of rounding up four frightened young children in their pajamas to get them dressed and over to a neighbor's house to seek help." Defense counsel, on cross-examination of a witness, had suggested that the fiancée had ransacked the house and may have been involved in the offenses.

Counsel was not ineffective for failing to seek severance from the trial of the codefendant, who was allegedly implicating Kitt. Kitt linked this to the trial court's rejection of an independent act instruction that had been requested. Kitt, however, was not entitled to an independent act instruction "because the victim's death was a foreseeable consequence of the events he set in motion when he participated int eh armed robbery and kidnapping."

Trial counsel was not ineffective for failing to present testimony of a witness who would have testified that the victim's fiancée told her that she could not identify the intruders." The trial court relied on the testimony of this witness from the codefendant's postconviction evidentiary hearing to establish that this witness was biased in favor of Kitt.

The claim of newly discovered evidence was based on an alleged recantation of testimony by a witness. That witness testified at the postconviction evidentiary

hearing of the codefendant, Wilson. However, the witness recanted only the prior testimony about Wilson's participation in the offenses, not Kitt's involvement.

Bullard v. State, 1D21-2769 (Dec. 1, 2021)

The First District affirmed the summary denial of a Rule 3.850 motion. Counsel was not ineffective for misadvising Bullard abut the independent act doctrine. Bullard was not entitled to an independent act instruction. He "claimed that he willingly participated in the robbery – but had not agreed to or planned the murder – and that the independent act defense would have established that he had no motive and that he was not the triggerman. Appellant is mistaken. Even if the jury believed that another co-felon shot the victim, the independent act defense would not have been appropriate because homicide is a foreseeable outcome of an armed robbery."

Counsel was not ineffective for not objecting to the jury having the indictment in the jury room. Although the indictment is not evidence in the case, Fla.R.Crim.P. 3.400(a) permits the information or indictment to be taken into the jury room.

Second District Court of Appeal

Vandawalker v. State, 2D18-4977 (Dec. 1, 2021)

On remand from the Florida Supreme Court, for reconsideration in light of State v. J.A.R., 318 So. 3d 1256 (Fla. 2021), the Second District affirmed the imposition of the $100 public defender fee, as the court need not announce its imposition or inform the defendant of the right to contest the fee when the court imposes the statutory minimum fee. The $100 fee for prosecution costs, however, was reversed, as that must be requested by the prosecution.

Third District Court of Appeal

Wright v. State, 3D18-2430 (Dec. 1, 2021)

Convictions for first-degree murder and other offenses were reversed for a new trial. The trial court failed to excuse a prospective juror for cause.

During voir dire, defense counsel inquired: "So can a completely innocent person be wrongfully accused of a crime?" The juror responded, "no," and reiterated that by shaking her head in the negative as to a follow-up question. The same juror

also raised a hand in response to defense counsel's question, "if you think if I am innocent and I am wrongfully accused of a crime, I will absolutely take the stand and testify on my own behalf?"

The Third District found "that the responses of the juror at issue, when taken at face value, raise concerns about her ability to serve as an impartial juror." "While the juror's responses in this regard may have reflected only a temporary confusion and misunderstanding of the law, there was no attempt to rehabilitate her. The juror's responses were not retracted or modified."

Gonzalez v. State, 3D21-1753 (Dec. 1, 2021)

The trial court erred by summarily denying a Rule 3.850 motion as "insufficient to support the relief requested," but erred by failing to provide an opportunity for amendment of the motion.

Fourth District Court of Appeal

Sanders v. State, 4D20-1913 (Dec. 1, 2021)

Sanders challenged the scoring of multiple prior convictions on the sentencing scoresheet. Once those were contested, the State was required to provide competent evidence of those convictions. The case was remanded for an evidentiary hearing on this issue. The claim had been raised through a Rule 3.800(b) motion pending the direct appeal.

Charles v. State, 4D21-1447 (Dec. 1, 2021)

The trial court erred in summarily denying two claims in a Rule 3.850 motion. Charles "alleged trial counsel failed to advise him that attempted second degree murder was a qualifying felony for first degree felony murder and that this omission caused him to reject a plea to forty-year term for second degree murder." The claim was facially sufficient, and an evidentiary hearing was required because the record did not refute the claim. The Fourth District, without discussion, also directed the trial court, on remand, to "evaluate appellant's related claim that counsel misadvised him that any homicide conviction would be for no more than second degree murder and would likely result in a sentence of twenty-five to fifty years because of appellant's lack of criminal history."

Fifth District Court of Appeal

Slanker v. State, 5D20-2373 (Dec. 3, 2021)

After the filing of an Anders brief on appeal, the Fifth District corrected multiple sentencing errors, several of which were failures of the written sentence to conform to the oral pronouncement. Additionally, the trial court orally imposed costs of incarceration in the amount of $50 per day, but the written order imposed a flat cost of incarceration of $250,000. The relevant statue provides for costs based on the degree of the offense for which there is a conviction. For a capital or life felony, the liquidated amount of $250,000 applied, and for convictions for any other degrees of crime, the $50 per day assessment applies. It is improper to impose both costs. The Fifth District remanded for reconsideration as the appellate court could not determine the trial court's intention on this.

Borders v. State, 5D21-921 (Dec. 3, 2021)

The Fifth District affirmed the denial of a Rule 3.850 motion in which Borders alleged newly discovered evidence – the recantation of a codefendant's trial testimony. In an affidavit, the codefendant now asserted that he testified against Borders only because law enforcement coerced him to do so. The trial court held an evidentiary hearing and rejected the claim on the basis of credibility determinations and inconsistencies between testimony at the evidentiary hearing and the prior trial testimony.

The Fifth District further noted that it was "well-settled that recantation testimony is 'exceedingly unreliable.'"

Haynes v. State, 5D21-1010 (Dec. 3, 2021)

An award of restitution was reversed for a new restitution hearing because the award was not supported by competent, substantial evidence. Haynes was found guilty of aggravated fleeing and eluding and grand theft. Prior to the theft, the stolen truck contained a GPS system. Upon its return, the GPS system was missing. There was testimony that the GPS system cost about $41,000 and that approximately $25,000 was still due from the financing of the GPS. The GPS was used by company bulldozers "to assist in cutting dirt to a precise elevation." The system was promptly replaced with a new unit for over $41,000.

There was no testimony about fair market value of the stolen unit and the court awarded restitution of $68,000, based on the price of the new unit and the amount still due on the original financing. Testimony that the stolen unit was worth "roughly $41,000," was insufficient. It was also error to admit "the sales quote presented by the State," as that constituted inadmissible hearsay. The restitution order also resulted "in a windfall to the victim." "While it may seem unfair that Oehlerking owes money on a GPS unit that he no longer possesses, the balance is a product of Oehlerking's financial decision. The proper restitution amount that can be attributed to Haynes's conduct is reflected by the GPS unit's fair market value, which was not presented at the hearing."

Mirino v. State, 5D21-1754 (Dec. 3, 2021)

The Fifth District reversed the summary denial of a Rule 3.800(a) motion for further proceedings. The motion, in the form of correspondence to the trial court, was based on an apparent conflict in records. The defendant claimed that the sentencing scoresheet included an invalid probation violation which, if removed, would entitle him to a lower sentence. The records attached to the motion purported to indicate that the probation violation resulted in a disposition of "not in violation/no action."

The motion, however, could not be treated as a Rule 3.800(a) motion, as the claim was beyond the scope of such a motion. An evidentiary hearing was required to resolve the conflict, and that could be done only with a Rule 3.850 motion. Mirino's claim was timely under Rule 3.850, but it required an amended motion, in accordance with Rule 3.850, and that was permitted on remand.