Case Law Update
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Supreme Court of Florida

Jackson v. State, SC21-754 (Jan. 20, 2022)

The Supreme Court affirmed the summary denial of a successive motion under Fla.R.Crim.P. 3.851. Jackson was not entitled to relief through the retroactive application of State v. Poole, 297 So. 3d 487 (Fla. 2020), regarding juror unanimity in capital penalty-phase proceedings. Jackson's death sentence became final in 1989, prior to Ring v. Arizona, and therefore Poole did not apply retroactively. The Court reiterated its own prior decisions regarding retroactivity.

Eleventh Circuit Court of Appeals

United States v. Garcon, 19-14650 (Jan. 21, 2022)

The Court vacated its prior panel decision and will rehear the appeal en banc. The issues that the Court will entertain en banc are:

> Did the district court err in concluding that defendant Julian Garcon met the safety-valve-eligibility requirement set forth at 18 U.S.C. s. 3553(f)(1).
>
> To answer this question, the parties should address, but are not limited to, the following issues:
>
> (1) Do we interpret the "and" in 18 U.S.C. s. 3553(f)(1) in the disjunctive or conjunctive?
> (2) How do we interpret s. 3553(f)(1)'s language referring to a "prior 3-point offense, as determined under the sentencing guidelines" and a "prior 2-point violent offense, as determined under the sentencing guidelines" when s. 4A1.1 of the Sentencing Guidelines assigns criminal history points to a "prior sentence of imprisonment," not a "prior offense"?

First District Court of Appeal

Brown v. State, 1D20-2213 (Jan. 19, 2022)

The First District affirmed the summary denial of a Rule 3.850 motion.

Brown was charged with one count of DUI manslaughter and two counts of DUI causing serious bodily injury. A key issue at trial was whether the defendant or the victim was travelling the wrong way into oncoming traffic. The State presented two accident reconstruction experts; the defense did not. Defense counsel, on cross-examination, elicited several inconsistencies from witnesses, and some witnesses believed that the victim's car was travelling in the wrong direction.

Brown's claim that counsel was not ineffective for failing to retain an accident reconstruction expert was properly denied because it was based on "pure speculation." "He assumes a hypothetical third expert would have analyzed the crash differently than the first two and that the new analysis would have been favorable."

Woods v. State, 1D21-0649 (Jan. 19, 2022)

Woods was not entitled to postconviction relief pursuant to Graham v. Florida. He pled guilty in 1989 to first-degree murder and received a life sentence, pursuant to a plea agreement providing for no parole eligibility for 25 years. Although the judgment of conviction referenced only the life sentence and did not reference the parole eligibility, the fact of his parole eligibility was not in dispute and, pursuant to the Florida Supreme Court's most recent pronouncements, a life sentence with parole eligibility after 25 years does not constitute a sentence of life without parole and Woods was therefore not entitled to relief.

Boatman v. State, 1D21-2565 (Jan. 19, 2022)

The First District denied a prohibition petition seeking the disqualification of a judge without written opinion. One judge authored a concurring opinion, which notes that this was a death penalty case which was proceeding during the COVID-19 pandemic, and that the judge made comments during consideration of a defense-requested continuance, as to which there was no objection.

Although some of the comments from the judge, which appeared to be directed solely towards defense counsel, regarding "candor and diligence in the

pretrial process," sufficed to "raise the judicial eyebrow slightly," the comments, in the view of the concurring judge were not sufficient to require disqualification. Specific judicial comments noted were that the defense was "making it very difficult for [the judge] to discern between not actually being ready and what [was] starting to feel like sort of willfully putting [the defense] in a position to continue to state [the defense was] not ready" and that it was "hard for [the judge] to discern between legitimate not ready and engaging in a scheduling strategy that puts [the defense] in a position to claim being not ready to maybe put [the defense] in the best position to continue, to get a continuance."

Second District Court of Appeal

Blount v. State, 2D20-1159 (Jan. 21, 2022)

Blount filed a motion to correct an illegal sentence in 2017. In a prior opinion, the Second District reversed the trial court's order denying the motion and remanded for resentencing based on the then new juvenile sentencing guidelines. After the Second District issued its mandate, the trial court stayed proceedings pending the Florida Supreme Court's decision in Pedroza v. State, 291 So. 2d 541 (Fla. 2020), which held that a term-of-years sentence was not equivalent of a de facto life sentence. Pedroza expressly disapproved the prior Blount decision. The trial court then dismissed the 3.800(a) motion based on Marshall v. State, 313 So. 3d 671 (Fla. 2d DCA 2019), where the Second District had denied a motion do enforce a mandate "based on the exception to the law of the case doctrine for a contrary intervening supreme court decision." The Second District then receded from Marshall in Howard v. State, 322 So. 3d 134 (Fla. 2d DCA 2021) (en banc).

The bottom line was that the Second District's mandate was binding and the trial court could not ignore it even though the substantive law had changed during the intervening period.

Hobdy v. State, 2D21-1221 (Jan. 21, 2022)

The Second District reversed the denial of a Rule 3.800(a) motion to correct illegal sentence.

Hobdy had been sentenced to equal concurrent sentences as both a habitual felony offender and a prison releasee reoffender for each of his convictions for armed burglary and armed kidnapping. The Florida Supreme Court previously held that such concurrent sentences are not permitted under relevant provisions of both the

PRR and HFO statutes. "Rather, courts are only authorized 'to deviate from the prison releasee reoffender sentencing scheme to impose a greater sentence of incarceration." Because the life sentence as an HFO was not greater than the life term as a PRR, the trial court lacked authority to impose the HFO sentence.

Solomon v. State, 2D21-1320 (Jan. 21, 2022)

The Second District reversed the denial of a Rule 3.800(a) motion to correct illegal sentence. The case presented the same issue as in the above case, Hobdy. In this case, however, the trial court found that the HFO sentence was greater than the PRR sentence and that the two sentences could be imposed. The written sentence, however, did not support the trial court's conclusions. The order denying the Rule 3.800(a) motion did not attach the oral pronouncement of sentence, which would control if there were any discrepancy. The case was remanded for further proceedings.

Miller v. State, 2D19-3355 (Jan. 19, 2022)

The Second District affirmed the denial of a Rule 3.850 motion as to all of its multiple claims except one. The one claim at issue alleged that trial counsel failed to strike a juror for cause, and that that juror, who ended up on the jury, was actually biased against Miller.

During voir dire by defense counsel, the juror stated that the failure of a defendant to testify "always seems like it's an admission of guilt by not speaking." The juror was not challenged for cause. When the jurors were announced, defense counsel both agreed with the named jurors and, upon questioning, Miller "agreed with the trial court that he had consulted with his attorneys about jury selection," and he affirmatively agreed with their selections. Miller subsequently exercised his right not to testify.

Miller testified that if counsel told him that he could object to the juror, he would not have accepted the panel. He added that at the time of jury selection, he did not know that the juror's answers were a problem because he was not an attorney. One of the two defense attorneys testified that at the time, counsel may have anticipated that Miller was going to testify, and that under such a scenario, the juror's comments may not have been a concern. Counsel also speculated that the defendant may simply have liked the juror regardless of the juror's response. Lead counsel also testified. Lead counsel had not been present for voir dire, but was present for the ultimate selection of the jurors. Counsel said that "he always talks to his clients

and says, '[i]f you don't like someone let us no.'" Neither counsel referenced any strategic decision to retain the juror.

As lead counsel was not present when the juror's response was given, lead counsel could not have discussed its ramifications with the defendant. The Second District did not see any "reasonable trial strategy that would excuse the failure to strike her for cause." A claim of ineffective assistance for failing to strike a juror for cause also requires proof that an actually biased juror sat on the jury. This juror's statement, that the failure to testify "always seems like it's an admission of guilty," established such actual bias where the juror was not rehabilitated.

Based on this claim, the Second District concluded that the trial court erred in denying the Rule 3.850 motion. The case was remanded for a new trial.

Third District Court of Appeal

McMahon v. State, 3D21-1775, 3d21-1774 (Jan. 19, 2022)

The Third District granted certiorari petitions in two cases in which the petitioners sought to disqualify the State Attorney's Office for Monroe County because the trial court failed to conduct an evidentiary hearing "on the issue of imputed disqualification."

Both petitioners were represented by the Public Defender's Office while attorney Moses was employed there. He left that office to become an assistant state attorney in May 2021. Shortly afterwards, the petitioners' new assistant public defender filed motions to disqualify ASA Moses and the entire SAO. The motions alleged that Moses "was privy to confidential and privileged information related to the legal representation of McMahon and Minner and that he was not properly screened." It as also alleged that even if ASA Moses had been properly screened, "he was still the supervising attorney of the only prosecutor in the misdemeanor division of the Key West branch of the Monroe County SAO." It was further alleged that ASA Moses, in his supervising capacity, would be present at counsel's table during hearings on the cases and that he was assigned to the same courtroom where the two defendants would be tried.

ASA Moses responded that as an assistant public defender he never represented the defendants, but he acknowledged that there was "group collaboration" about the cases; that he was "generally familiar with the facts," but did not believe he possessed "any intimate confidential knowledge." He suggested

a remedy of transferring the cases to the Marathon branch of the SAO. The current assistant public defender disputed Moses and asserted that he did have "intimate knowledge."

The trial court, without resolving the dispute as to "intimate knowledge," transferred the cases to the Marathon Office of the SAO and disqualified ASA Moses, but denied the motion to disqualify the entire SAO.

Based on a review of prior case law from the Florida Supreme Court, the Third District concluded that the issue of whether imputed disqualification extended to the entire SAO hinged on whether or not ASA Moses had been party to confidential communications. As this was factually disputed in the trial court and was not resolved through an evidentiary hearing, the case was reversed and remanded for further proceedings

Bailey v. State, 3D21-2107 (Jan. 19, 2022)

A petition for writ of certiorari, seeking a new immunity hearing under the Stand Your Ground law, was denied.

A pretrial motion for immunity was litigated in 2017, prior to the 2017 statutory amendment regarding the burden of proof at such a hearing. The trial court concluded that the defendant failed to meet his burden of proof at the hearing. Bailey then filed a prohibition petition, and, while that was pending, the legislature amended the statute and placed the burden of proof on the State, though clear and convincing evidence. The Third District concluded at that time that the statutory amendment did not apply retroactively and denied relief.

While the case was back in the trial court, the Florida Supreme Court issued its opinion on retroactivity and held that the statutory amendment applied to immunity hearings held after the effective date of the amendment. Bailey then filed a second motion for immunity, realleging the same facts. The trial court denied the motion because the first hearing had been held prior to the effective date of the statutory amendment.

The Third District, in this case, aligned itself with other district courts of appeal in concluding that "defendants in nonfinal cases are not entitled to new immunity hearings based upon the intervening statutory change" when they already had immunity hearings prior to the effective date of the amendment. It did not matter that this case had not yet proceeded to trial. Bailey did not cite any "controlling

precedent for the proposition that an accused, having been afforded an immunity hearing prior to the statutory amendment, is entitled to relitigate the issue by means of a new motion. Without controlling precedent on an issue, a district court cannot conclude that a circuit court violated a clearly established principle of law."