Case Law Update
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Supreme Court of Florida

Wade v. State, SC21-1094 (Feb. 24, 2022)

The First District Court of Appeal dismissed a pro se appeal of a prisoner as untimely, where the notice of appeal did not contain a prison stamp in conformity with the Department of Corrections' administrative rule requirements. Wade then filed a mandamus petition in the Florida Supreme Court, and the Supreme Court ordered the First District to reinstate the appeal.

The Supreme Court concluded that the prison mail log furnished by Wade provided sufficient indicia that the notice of appeal had been tendered to corrections officials in a timely manner. The Court rejected the arguments of the State and DOC that only a "prison date stamp in conform with" rule 33-210.102(8) of the Florida Administrative Code could suffice to establish timeliness under the prisoner mailbox rule.

Where the prison uses legal mail logs rather than prison date stamps, any insistence on the use of a date stamp would leave the prisoner "without any way to establish the timeliness of his notice of appeal." The prisoner "has no control over what legal mail system the correctional institution at which he is housed uses, nor does he have the ability to require prison officials to comply with rule 33-210.102(8)." Once Wade produced the mail log, the burden shifted to the State "to demonstrate that the notice was either not timely delivered to prison officials for mailing, or that Wade is otherwise not entitled to the benefit of rule 9.420(a)(2)(A)," which addresses the timeliness of filings by inmates. The fact that Wade's prior postconviction motion contained a prison date stamp was irrelevant, as it indicated only what mail system the prison was using at that earlier point in time, which was several months earlier.

The First District, when denying relief, had further stated that Wade could avail himself of the remedy of a petition for belated appeal. The Supreme Court rejected that, as that rule, by definition, governs "untimely" appeals, and is not applicable when the appeal has been timely filed in the first place.

First District Court of Appeal

Faulk v. State, 1D21-1468 (Feb. 23, 2022)

The First District affirmed the dismissal of a motion to correct illegal sentence.

The motion alleged that 25-year HFO sentences for multiple armed kidnappings, a life felony, "were illegal because chapter 95-182, Laws of Florida, was held unconstitutional" by the Florida Supreme Court in 1999. Chapter 95-182, which permitted life felonies to be subjected to HFO sentencing enhancements, had been found to violate the single subject rule in 1999. The window period of unconstitutionality ran from October 1, 1995 through May 24, 1997, during which period Faulk's offenses were committed. Although the HFO designation on those offenses was illegal, Faulk "received well below the maximum sentences he could have received on the armed kidnapping counts as they are life felonies regardless of application of the habitual offender statute. Thus, Faulk has not demonstrated, on the face of the record, that his 25-year sentences would be illegal under the applicable sentencing guidelines."

Third District Court of Appeal

Isaac v. State, 3D19-2495 (Feb. 23, 2022)

The Third District affirmed convictions and sentences for second-degree murder, kidnapping and conspiracy to commit kidnapping or murder, or both.

Isaac and one other individual participated in the kidnapping of the victim. Isaac told his coperpetrator, Gandulla, that the victim "was going to 'get a beat-down.'" The victim was bound and placed in a vehicle driven by Isaac, while Gandulla remained with him. They later met up with another conspirator, Marin, and transferred the victim to Marin's vehicle. Gandulla left them at that time, while Marin and Isaac drove off and took the victim to a site where he was beaten, stabbed and set on fire.

The evidence was sufficient as to the kidnapping. "Gandulla testified that he was with Isaac when he witnessed Isaac abduct the victim, place the victim in plastic handcuffs, and put the victim in the cab of Isaac's rented pickup truck. After the victim was confined within the truck, Isaac told Gandulla that the victim was going

to 'get a beat-down.' Isaac eventually transferred the victim to the backseat of the car of another co-conspirator, Manuel Marin."

The evidence was also sufficient as to the conspiracy charge. In addition to Gandulla's trial testimony, the State presented cellphone records of all of the participants. The Third District had previously affirmed a conspiracy conviction for another codefendant, Perdomo, who was jointly tried with Isaac.

The evidence was sufficient as to the second-degree murder conviction. "Gandulla testified that Isaac abducted the victim and brought the victim to Marin so that the victim would 'get a beat-down.' After meeting up with Marin, Isaac transferred the victim from Isaac's rented pickup truck to the back of Marin's car and stayed with Marin and the captive victim. Gandulla drove off in the truck. Isaac and Marin's cellphone data and toll records from Florida's Turnpike established that Isaac accompanied Marin to the site where the victim was beaten, stabbed and set on fire. Gasoline was used as the accelerant on the victim's body. Gandulla testified that when Isaac met up with Gandulla to retrieve Isaac's rented truck, Isaac smelled of gasoline. At this follow-up encounter, Isaac told Gandulla that the victim had 'gott[en] a beating.'"

The absence of evidence that Isaac knew or intended that the victim would be killed was irrelevant, as Isaac was a principal to the murder and, as such was guilty "for the acts physically committed by another." Isaac participated in the beating, and it did not matter whether he or Marin slit the victim's throat or inflicted the blows to the skull that jointly caused the death.

The information was not fundamentally defective with respect to the conspiracy charge. Isaac argued it "was defective because it alleged that Isaac had conspired to commit one or more offenses – i.e., conspiracy to commit kidnapping or murder, or both – in the same count." This claim was not asserted until post-verdict, in a motion to arrest judgment, and due to the untimeliness of the claim, Isaac had to show that any defect was not merely technical, "but that it [was] so fundamentally defective that it cannot support a judgment of conviction." That occurs "only where it totally omits an essential element of the crime or is so vague, indistinct or indefinite that the defendant is misled or exposed to double jeopardy." That did not occur here, as Rule 3.140(k)(5) expressly permits an information to contain alternative or disjunctive allegations. It, therefore, is permissible to allege – as occurred here – that the defendant conspired to commit one or more criminal offenses in the same count of the information."

Fifth District Court of Appeal

Smith v. State, 5D21-993 (Feb. 25, 2022)

The Fifth District reversed, in part, the summary denial of a motion to correct illegal sentence.

In the aftermath of several prior postconviction proceedings, Smith was left with sentences for four counts of aggravated assault. Smith raised a double jeopardy challenge. The sentence for each of them, at the time of the instant motion to correct illegal sentence, was 20 years in prison, with a three-year mandatory minimum sentence. Smith was also sentenced to a 20-year term on a separate aggravated battery.

As a result of the multiple postconviction modifications of sentence, at the time that the current aggravated assault sentences had been modified, resulting in a reduction of the 20-year mandatory minimum originally imposed to three years, Smith had already served the full sentences for the aggravated assaults, but was still serving the sentence for aggravated battery. Sentencing a defendant after the entirety of the sentence has already been served constitutes a double jeopardy violation.

Although this claim had been litigated in a prior postconviction motion, but not raised on appeal, the doctrine of collateral estoppel was applicable. And, although that would normally preclude relitigation of the litigated issue, there is a manifest injustice exception to the application of the collateral estoppel doctrine. A sentencing violation of double jeopardy rights constitutes such a manifest injustice.

Scott v. State, 5D21-2706 (Feb. 25, 2022)

The trial court erred in dismissing a pro se prisoner's Rule 3.850 motion as untimely, as the prison date stamp on the motion reflected that it was filed within the two-year time limit, which is based on when the prisoner tenders the pleading to prison officials for mailing.

Pagan v. State, 5D22-0258 (Feb. 21, 2022)

Pagan had previously been found incompetent to proceed. In a habeas corpus petition, he argued that "evoking his conditional release and detaining him in the Brevard County Jail pending a competency re-evaluation is contrary to this Court's decision in *Smith v. State*, 247 So. 3d 77 (Fla. 5th DCA 2018). We agree."

After an adjudication of competency, Pagan was released upon conditions in a 2017 case, and was subsequently released upon conditions in three more cases, from 2019, 2020 and 2021. When he committed a new law violation in another case, later in 2021, the State moved to revoke bond. The evidence at that time was insufficient to warrant involuntary commitment. As a result, "the trial court could only modify Pagan's conditions of release." The case was remanded for "an immediate hearing to determine whether Pagan's release conditions should be modified or remain the same."