

Case Law Update
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Third District Court of Appeal

[State v. Moore](#), 3D21-273 (Mar. 2, 2022)

The trial court conducted an evidentiary hearing on a motion to dismiss based on stand-your-ground immunity and granted the motion. The State appealed and the Third District reversed and remanded for reinstatement of the charges “because defendant’s motion failed to meet the threshold pleading requirement for raising a prima facie claim of self-defense immunity.”

The defendant was charged with second-degree murder for allegedly shooting the victim, Stevens, who was his neighbor. The factual allegations in the motion to dismiss included the following: Moore called 911 and reported that he shot Stevens with a shotgun. He reported that Stevens had “threatened him.” Upon arrival of the police, Stevens was found lying unconscious with a single shotgun wound to the abdomen. At that time, the defendant “had two cuts on his face that were bleeding,” and Moore “informed the police that Stevens had caused the cuts.” Two weeks earlier, there had been an incident at the same house “where Stevens unexpectedly punched the Defendant, knocking him out cold.” “The Defendant told at least one deputy on scene that he acted in self-defense.”

The trial court erred in proceeding to an evidentiary hearing because the allegations in the motion “failed to raise a prima facie claim of self-defense immunity, because [the motion] did not allege specific facts that show or tend to show that Moore used deadly force because he had a reasonable belief that such force was necessary to prevent imminent death or great bodily harm to him; or that Moore used such deadly force while attempting to resist Stevens’ attempt to murder Moore, or Stevens’ attempt to commit a forcible felony on Moore, or Stevens’ attempt to unlawfully and forcibly enter Moore’s home. The motion does not allege that an altercation even occurred, much less how it occurred; who initiated it; what threats were actually made; whether and how any conduct by Stevens placed Moore in fear of imminent death or great bodily harm; or what forcible felony or other actions or conduct of Stevens led Moore to reasonably believe he had to resort to the use of deadly force.”

The Third District further noted that the motion to dismiss included allegations that the police did not obtain or have any information as to the details of what led up to the shooting. “Such allegations do not represent an affirmative claim of self-defense, but rather a claim that the State or the police cannot **disprove** an assertion of self-defense immunity. While such an allegation or argument may be relevant at an evidentiary hearing, it does not serve to satisfy defendant’s initial burden to allege specific facts which affirmatively show or tend to show the elements of a self-defense claim that entitle him to immunity.”

The Court also noted the allegation that Moore told an officer that he acted in self-defense. The Court noted that there was a legal issue as to whether such an attenuated allegation could suffice to establish a prima facie claim of self-defense, as it could be construed as merely an assertion that a defendant told that to the police, rather than an assertion by the defendant that he did, in fact, act in self-defense. That legal issue was not addressed, as the allegation was deemed conclusory, in any event.

Under such circumstances, the motion should have been denied and the trial court should not have conducted an evidentiary hearing.

[Spivey v. State](#), 3D21-1647 (Mar. 2, 2022)

Without setting forth facts, the Court cited and quoted a prior holding of the First District: “When a consecutive sentence is pronounced, the defendant is not entitled to credit for time served on an antecedent sentence.”

[Pace v. State](#), 3D21-2148 (Mar. 2, 2022)

After a Rule 3.800(a) motion to correct illegal sentence was denied, the defendant filed a motion for rehearing, which the trial court denied as unauthorized. The Third District noted that Rule 3.800(a) was amended in 2005 to permit motions for rehearing. As the trial court did not consider the merits of the motion for rehearing, the case was remanded for reconsideration of the motion.

Fourth District Court of Appeal

[Millien v. State](#), 4D20-1940 (Mar. 2, 2022)

The Fourth District affirmed convictions and sentences for two counts of lewd or lascivious battery on a person between the ages of 12 and 16. The Court addressed a single issue: whether the “trial court illegally sentenced [defendant] to a term

exceeding the statutory maximum for second degree felonies because the trial court did not properly apply the adult-on-minor sentencing multiplier provision in calculating the lowest permissible sentence.”

Under the adult-on-minor sex offense multiplier, if the offender was 18 years of age or older and the victim younger than 18, and the offense for which the sentence is being imposed is one of the offenses enumerated in section 921.0024(1)(b), Florida Statutes, the “subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.”

In this case, the primary offense on the scoresheet was lewd or lascivious battery, as was the second offense for which there was a conviction. At sentencing, the scoresheet reflect a lowest permissible sentence of 182.25 months in prison, with a range up to the statutory maximum of 30 years (15 years for each offense). The trial court concluded that because the lowest permissible sentence, 182.25 months, exceeded the 15-year maximum sentence for each offense, the court was required to sentence Millien to the lowest permissible sentence under the scoresheet, 182.25 months for each count. There was no discussion of the adult-on-minor multiplier.

As a preliminary matter, the Fourth District concluded that the multiplier should have been utilized, as each of the offenses under section 800.04 qualified as an enumerated offense. The Court rejected the State’s argument that the multiplier was implicated only if there was a violation of section 787.01(2) or 787.02(2) and a violation of “one of the various sexual offenses listed.” The Court engaged in a construction of the statutory language and grammar in reaching the conclusion that the multiplier constitutes a “list format, listing each of the qualifying offenses separately.”

Millien argued, with respect to the primary offense “that because his LPS after applying the adult-on-minor multiplier exceeds the statutory maximum sentence for his primary offense under chapter 775, the limiting language of the adult-on-minor multiplier required the trial court to sentence Millien to the statutory maximum for his primary offense under chapter 775, or 180 months in prison.” This argument was based on the phrase “statutory maximum sentence” as it appears in section 921.0024. The Fourth District disagreed. “Accordingly, because the limiting language’s concluding words do not reference chapter 775 when using the phrase ‘the statutory maximum sentence,’ it follows that ‘the statutory maximum sentence’

as used in the limiting language’s concluding words is literally the maximum sentence which Millien faced under the Florida Criminal Punishment Code, without application of the adult-on-minor multiplier.”

With respect to the treatment of the additional offense at sentencing, the second count of lewd or lascivious battery, the Fourth District agreed with Millien’s argument “that the sentence imposed for the scoresheet’s additional offense (count 2) had to be the same sentence imposed for the primary offense (count 1). That is because the LPS for the primary offense in this case exceeds the maximum sentence for the offense under section 775.082.”

Although the trial court erred by not considering the multiplier, the proper sentence was nevertheless imposed for both convictions and the sentences were affirmed.

[Blair v. State](#), 4D21-3214 (Mar. 2, 2022)

After a probation revocation proceeding, when the court sentenced the defendant, the court erred by giving a double credit as to time previously served. When that error was discovered by the Department of Corrections, the court corrected the credit. Blair appealed and argued that the state “was without jurisdiction to file the motion to correct the erroneous double credit of prior time served, and further, that the trial court’s subsequent correction violated double jeopardy.” The Fourth District disagreed and affirmed the order correcting the double credit.

The Court concluded that the motion filed by the State qualified as a motion under Rule 3.800(b), and, as such, was authorized for the purpose of correcting what was clearly a scrivener’s error. With respect to the double jeopardy challenge, the double jeopardy clause of the Constitution protects a defendant’s “legitimate expectations as to the length of his sentence.” “Awarding appellant additional jail credit, that he did not serve or earn, would thwart ‘society’s interest in extracting a full and just punishment for the crime.’” “further, awarding undeserved or unearned jail credits, due to mistake or error, undermines society’s overall confidence in the criminal justice system.”

Fifth District Court of Appeal

[State v. Boyd](#), 5D20-2196 (Mar. 4, 2022)

On rehearing, the Fifth District reversed the trial court's order denying the State's motion to designate Boyd a sexual predator under section 775.21, Florida Statutes, directing the trial court to reconsider the motion in light of State v. McKenzie, 46 Fla. L. Weekly S271 (Fla. Sept. 23, 2021). That case held that a circuit court had jurisdiction to impose the designation on a qualifying offender when the sentencing court failed to impose that designation at the time of sentencing in the criminal case.

[Hiple v. State](#), 5D20-2303 (Mar. 4, 2022)

The Fifth District reversed the summary denial of a Rule 3.850 motion, with respect to three of its multiple claims, where those claims were facially sufficient and not conclusively refuted by the record.

Ground three of the motion alleged that "counsel was ineffective when he, without Appellant's consent, conceded during closing argument that a firearm was used in the robbery." That concession "would and likely did affect the sentence imposed in this case," and the claim was therefore facially sufficient. The trial court concluded that counsel made a strategic tactical decision, but issues of trial strategy "generally should only be made after an evidentiary hearing."

Part of ground eight argued that "counsel compounded the effect of his erroneous concession by failing to object when the State countered in its rebuttal that people who commit crimes 'always get rid of the guns,' thereby suggesting that it was irrelevant that no gun was recovered when Appellant was arrested." This comment was not supported by evidence admitted at trial, and was a facially sufficient claim which was not conclusively refuted by the record.

Ground ten alleged cumulative error. "Where multiple errors are found, even if deemed harmless individually, the cumulative effect of such errors may deny the defendant a fair and impartial trial." As the case was being reversed for further consideration of the two prior claims, this claim had to be reconsidered as well.

[Zimmershead v. State](#), 5D21-1209 (Mar. 4, 2022)

Where a Rule 3.850 motion was denied as being facially insufficient, the trial court was required to provide the defendant with an opportunity to amend the motion.

[Grillo v. State](#), 5D21-2145 (Mar. 4, 2022)

The denial of a Rule 3.800(a) motion to correct illegal sentence was reversed. The sentence imposed was illegal “because it imposes an adult sanction but maintains [the defendant’s] youthful offender status.”

Grillo was originally sentenced prior to his 21st birthday as a youthful offender, to a prison term of three years, followed by one year of community control and two years of probation. While on community control, Grillo committed new drug-related offenses and, upon a revocation of community control, he was sentenced to a term of 25 years in prison, which included a 25-year mandatory minimum sentence. At the time that the trial court imposed the 25-year sentence, the court also announced that Grillo would “maintain his youthful offender status.”

“When a youthful offender commits a substantive violation of probation and the trial court elects to impose a sentence in excess of the six-year cap, the sentence necessarily becomes an adult CPC sentence such that the defendant does not retain his or her ‘youthful offender status.’” “Because the transcript of the violation of community control hearing makes it clear that the court intended to impose adult sanctions for Grillo’s substantive violations of his supervision and that the court only ordered that Grillo would maintain his youthful offender status because it was under the mistaken impression that it was required to do so, we remand for the postconviction court to strike the erroneous youthful offender designation.”

[Acevedo v. State](#), 5D22-0480 (Mar. 2, 2022)

A habeas corpus petition was granted where the State had not moved for pretrial detention and the court failed to set a bond on a battery charge.