Case Law Update
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Supreme Court of the United States

Shinn v. Ramirez, 20-1009 (May 23, 2022)

In two federal habeas corpus proceedings challenging state court convictions, the federal district courts were presented with claims that were procedurally barred because they were not properly presented in state court proceedings. In efforts to determine whether those procedural defaults could be excused in federal court on the basis of a showing of cause and prejudice by the habeas petitioner, the federal district courts, in both cases, permitted the habeas petitioners to present new evidence in federal court, in efforts to demonstrate that postconviction counsel in state court had been ineffective for not properly pursuing the procedurally defaulted claims.

When the federal district courts permitted evidentiary development in federal court, as to matters that had not been developed in state court, the federal courts relied on Martinez v. Ryan, 566 U.S. 1 (2012), which held that "ineffective assistance of postconviction counsel is 'cause' to forgive procedural default of an ineffective-assistance-of-trial-counsel claim, but only if the State required the prisoner to raise that claim for the first time during state postconviction proceedings."

Evidentiary hearings in federal habeas corpus proceedings are permitted only in rare circumstances. When the prisoner has "failed to develop the factual basis of a claim in State court proceedings," a federal evidentiary hearing is not authorized unless one of two statutory exceptions exist, and the habeas petitioner demonstrates that the new evidence will establish his innocence "by clear and convincing evidence." In this case, the Supreme Court held that the "equitable rule announced in *Martinez*" did not enable federal courts to dispense with the above-noted statutory limitations on evidentiary hearings in federal court.

Eleventh Circuit Court of Appeals

United States v. Jimenez-Shilon, 20-13139 (May 23, 2022)

The Eleventh Circuit affirmed a conviction for possession of a firearm by an illegal alien. The Court held that "the federal law that prohibits illegal aliens from possessing firearms" does not violate the Second Amendment.

The Second Amendment guarantees "the right of the people to keep and bear Arms." The Court first addressed the question of who "the people" referenced in the Second Amendment are. The Court did not answer that question, however, and merely assumed "for the sake of our decision that" Jimenez, an illegal alien, was included among the "people" referenced in the Amendment.

"Even if Jimenez can lay a legitimate claim to being among 'the people' as a general matter, he – as an illegal alien – may be forbidden from bearing arms while living within our borders." The Court examined the historical evolution of the right to bear arms and found that English and colonial era laws "reveal 'an early feature of the emerging republic' – the selective 'disarmament of groups associated with foreign elements.'" The right to bear arms was viewed as a "citizen's right," one "that was closely associated with national fealty and membership in the body politic." The Court's opinion notes the use of language in early state constitutions, expressly limiting "the right to keep and bear arms to 'citizens.'" The opinion further supported its conclusion by reference to international law regarding the status of aliens who were permitted to settle and stay in a country.

United States v. Gardner, 20-13645 (May 27, 2022)

The Eleventh Circuit affirmed a 180-month sentence for possession of a firearm by a convicted felon. The sentence had been enhanced under the Armed Career Criminal Act based on three prior "serious drug offenses," Alabama state convictions for "first-degree unlawful use of marijuana for other than personal use and a conviction for unlawful distribution of a controlled substance."

The Court addressed the issue of whether the Alabama convictions qualified as 'serious drug offenses" under the ACCA. Serious drug offenses must have a maximum term of imprisonment of 10 years or more. The Alabama statutes provided for penalties of 10 years or more. Gardner argued that the maximum term of imprisonment, as determined by the state sentencing guidelines calculations, should have applied, and that using that, the maximum possible sentence was less

than 10 years. The Eleventh Circuit disagreed. Applying what is known as the "categorical approach," the Court looks "to the maximum statutory sentence for Gardner's drug offenses, not to the high end of his presumptive sentencing range."

First District Court of Appeal

Falcon v. State, 1D20-2417 (May 25, 2022)

After Falcon's sentence of life in prison without parole for a murder committed while a juvenile was reversed, she received a new sentencing hearing and was again sentenced to life in prison, with judicial sentencing review after 15 years. That sentence was appealed and the First District affirmed it.

Under the current juvenile sentencing statutes, the life sentence may be imposed for one who killed, intended to kill, or attempted to kill, and this must be found beyond a reasonable doubt by the jury in its determination of guilt. However, the sentencing court was not relying on that sentencing provision. Rather, it relied on a provision which made the manner in which the offense was committed one of several relevant sentencing factors. The issue regarding who actually killed the victim arose in the context of that statutory provision. In this case, the original jury had been instructed on both felony murder and premediated murder, and was not asked to determine whether Falcon was the shooter.

This case involved the shooting of a cab driver. Falcon and her codefendant, Gilcrhist, had engaged in discussions about robbing someone. During the course of these discussions, Falcon had test fired a firearm several times, and told her codefendant that she wanted to shoot someone in the back of the head. Gilchrist agreed, but wanted to rob the person as well. The two eventually got into a cab and the next day, Falcon told a cousin, one of the original offense planners, who did not get into the cab, that she had shot the cab driver and had no regrets.

Although the jury at the time of the conviction did not determine who the shooter was, all of the evidence indicated that Falcon was the "driving force behind the events that led to the taxicab driver's death. The appellant is the one who was test-firing the firearm, hailed the taxicab, and dictated the final destination for the murder." The only evidence as to Gilchrist was that he "stated on one occasion that he was not afraid to shoot someone" and he owned the firearm that was used for the shooting. Under these circumstances, the First District concluded that "a reasonable jury would have determined" that Falcon was the shooter.

The trial court's sentence had been imposed under section 775.082(1)(b)2., Florida Statutes. That permits a life sentence for one who did not actually kill, intend to kill, or attempt to kill, based upon a consideration of multiple factors set forth in section 921.1402. One of those factors is the "nature and circumstances of the offense committed by the defendant." It was in connection with this factor that the sentencing court had determined that Falcon was the shooter.

The First District concluded, alternatively, that even if a reasonable jury could not have made that determination, that was only one of six factors the trial court relied on from section 921.1402, and the sentencing court, in its written order did not weigh this factor more heavily than it did the other six factors relied upon. The other six factors, for which the appellate court found sufficient evidence, were briefly discussed, and included: the effect of the crime on the victim's family and community; the defendant's age, maturity, intellectual capacity, and mental and emotional health; family background; immaturity; extent of participation in the offense; effect of family or peer pressure; prior criminal history; effect of characteristics attributable to youth; and the possibility of rehabilitation.

Of significance in these findings, the defendant, 15-years old at the time of the offense, had a high level of intelligence and was generally well-behaved. Although immaturity at the time of the offense was evidence by some drinking of alcohol, the participant who abandoned the plan before Falcon got into the cab testified that Falcon became less drunk by the time she entered the cab. Falcon set the events into motion and was the primary planner. She was the one who wanted to shoot someone in the back of the head. There was no record evidence of youthful characteristics playing a factor in the crime. There was little evidence that Falcon accepted responsibility for her actions or that she was truly remorseful. While she apologized for her role in court, she did not say what role she played. While there was evidence of efforts to improve herself subsequent to the offense, "[a]ll that evidence is more relevant in a review hearing where the focus in on rehabilitation rather than the crime." As Falcon has already served more than 15 years in prison, she has an immediate entitlement to such a sentencing review proceeding, and in that hearing, "the trial court will have more latitude to focus on the remarkable progress the appellant has made."

One judge dissented. A key point in the dissent's analysis was that the sentencing court erred in relying on Falcon's post-trial admission to being the shooter in an affidavit used for a clemency application. The dissent found that the error in considering this by the sentencing court could not be deemed harmless. The dissent also found that some of the other sentencing factors included analysis by both

the trial court and appellate majority based on points in time other than the defendant's behavior or mental condition at the time of the offense. For example, the dissent observed that a GED obtained two years after the murder should not be relevant.

The dissent includes substantially greater details regarding the evidence adduced at the resentencing hearing than does the majority opinion. The dissent ultimately concluded that the sentencing court's findings regarding the multiple factors were not supported by substantial, competent evidence and that the imposition of the life sentence was therefore an abuse of discretion.

State v. Davis, 1D20-2860 (May 25, 2022)

Davis was convicted and sentenced for attempted second-degree murder with a firearm, for an offense committed while he was a juvenile. He was sentenced to 30 years in prison. The issue on appeal was whether he was entitled to judicial review of the sentence, and, if so, whether it would be available after 20 years or 25 years. The First District concluded that sentencing review was available after 25 years.

The case was governed by section 775.082(3)(b)2., Florida Statutes, which applies to a sentence exceeding 25 years for persons convicted "under" section 782.04. Davis argued that his conviction was for "attempted" murder, not murder, and that his conviction was not "under" section 782.04. The First District disagreed. Convictions for attempted murders are still under the murder statute.

Fourth District Court of Appeal

Walton v. State, 4D20-655 (May 25, 2022)

On rehearing, the Fourth District accepted the State's conceding of error and held that the trial court erred by failing to conduct a competency hearing after being on notice of an issue regarding competency to stand trial. On remand, the trial court is authorized to determine whether a nunc pro tunc finding of competency is possible.

The Court distinguished this case from State av. Dortch, 317 So. 2d 1074 (Fla. 2021). That involved a voluntary plea, and fundamental error is not an exception to the preservation requirement of the appellate rules. This case proceeded to trial.

Marquis v. State, 4D21-2172 (May 25, 2022)

On appeal from a conviction and sentence for misdemeanor battery, the Fourth District addressed issues regarding the conditions of probation, reversing as to one and suggesting a revision as to a second.

The requirement of payment of $50 per month for the costs of supervision exceeded the statutorily mandated cost of $40, where no oral pronouncement had been made; it was reversed with directions to reduce the amount to $40.

Marquis was required to obtain her "probation officer's consent before leaving the county of her residence, changing her residence, or changing her employment." This was not orally pronounced. Based on a review of statutory language in sections 948.03(1) (a), (b) and (d), in para materia with provisions in section 948.06, the Court held "that the condition requiring Appellant to obtain her probation officer's consent before leaving a specified place – her county f residence and the jurisdiction of the court – and before changing her address or place of employment, is consistent with standard conditions of probation." As it was a standard condition of probation, it did not require an oral pronouncement in court at sentencing. That condition was therefore affirmed.

Another condition required that the defendant not "visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used." This was challenged because it omitted the word "knowingly." Section 948.03(1)(n), Florida Statutes (2020), prohibits the probationer from knowingly visiting such places. The Fourth District has previously held that the omission of the knowledge element in the probation order was "not necessarily error," and the Court has remanded in those cases "suggesting that the trial court amend the condition" to prohibit knowingly visiting the prohibited places. The Court abided by its prior practice.