Case Law Update
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First District Court of Appeal

State v. Bryant, 1D21-694 (June 22, 2022)

The First District reversed the trial court's order which found that the trial court could not award restitution because the 60-day deadline for determining the amount had elapsed.

A plea agreement between the parties "stated that jurisdiction would be reserved for sixty days to determine the amount of restitution." The court accepted the plea and ordered restitution, but, after hearing from the defense, the court thought the parties might be able to reach an agreement as to the amount by themselves. The court retained jurisdiction for 60 days. That 60-day period then expired.

The self-imposed deadline of 60 days was not controlling. "'If an order of restitution has been entered in a timely manner, a court can determine the amount of restitution beyond the sixty-day period.'" Here, the trial court already ordered that restitution was being required and also included provisions regarding restitution in the conditions of probation, including one for early termination after restitution had been paid.

Manuel v. State, 1D21-1315 (June 22, 2022)

A trial court's denial of a downward departure sentence will not be reversed "where there is o argument that the trial court misconstrued its discretion to depart, or had a blanket policy of refusing to exercise its discretion to depart."

Lynch v. State, 1D21-1968 (June 22, 2022)

Claims asserted in a trial court postconviction motion were deemed abandoned when those arguments were not presented in the initial brief on appeal. And, new claims that were asserted on appeal were procedurally barred as they were not presented in the trial court.

Diamond v. State, 1D21-2424 (June 22, 2022)

The trial court ordered a competency evaluation, which was completed, but then failed to hold the required competency hearing or make independent determinations of competency. The case was remanded for further proceedings, including a competency hearing and nunc pro tunc determination of competency if the trial court finds Diamond competent at the time of the trial. If the trial court is unable to make that nunc pro tunc determination, a new trial must be held.

Rivera v. State, 1D22-315 (June 22, 2022)

"'[A] claim for jail credit beyond the amount agreed to in a plea bargain is not cognizable in a rule 3.801 proceeding.'"

Butts v. State, 1D22-0494 (June 22, 2022)

In addition to striking pretrial appellate court pleadings filed pro se by Butts while he was represented by counsel in the pending trial court proceedings, the First District also addressed a mandamus petition Butts filed, in which he sought to compel the Clerk of the District Court of Appeal to assist him in several capacities. The mandamus petition was denied. The First District noted that the Clerk is not obligated to serve pleadings on Butts' behalf.

Second District Court of Appeal

Chapman v. State, 2D21-458 (June 24, 2022)

An appeal from a probation revocation order was dismissed where the resulting sentence had been fully served "and therefore the court could no longer provide any meaningful relief."

Third District Court of Appeal

Curry v. State, 3D22-0490 (June 22, 2022)

In Rule 3.800(a) motion, Curry alleged that pursuant to the terms of his plea agreement, he was entitled to an additional 162 days of credit for gain time that was earned during his prior prison term. The trial court denied the motion. In the appellate court, the plea colloquy was not a part of the record on appeal and it was "unclear whether Curry's negotiated plea specified that his sentence was to

encompass gain time earned during his prior prison terms, as the written sentence specifies: "ALL PRIOR PRISON AND GAIN TIME." The motion should have been treated as a Rule 3.850 motion and, on remand, the trial court was directed to attach records conclusively refuting the claim.

The Court further noted that regulation of gain time rests with the Department of Corrections, not the sentencing court. "However, if the Department's forfeiture of gain time results in a longer sentence than that intended by the express terms of the plea, the trial court must either resentence the defendant in a manner that effectuates the plea or allow the defendant to withdraw his plea."

Fourth District Court of Appeal

A.T. v. State, 4D22-1097 (June 22, 2022)

An extension of home detention beyond 21 days after being found incompetent to proceed was authorized by section 985.26(4)(a), Florida Statutes (2021), based on the court's finding that the juvenile would be a danger to the community if released. That statutory provision authorizes extensions when continuances are granted "for cause on motion of the child or his or her counsel or of the state." The stay of proceedings resulting from incompetency "effectively continued" the proceedings, thus authorizing the extended home detention.

Fifth District Court of Appeal

Kelley v. State, 5D21-1569 (June 20, 2022)

A conviction for neglect of a child, "arising from an incident where [Kelley] drunkenly walked a four-year-old child under his supervision down the middle of Apopka Avenue," was reversed. The behavior, although "negligent and irresponsible," "did not constitute 'culpable negligence.'"

Kelley was observed by an officer "swaying back and forth" while walking on the double yellow lines in the middle of the road, which had a 25-mile-per-hor speed limit, and the child was next to him, atop a toy scooter. As this off-duty officer approached in his truck, three or four vehicles backed up behind the officer's truck, and when "some traffic" was approaching from the other direction, the officer honked twice, and Kelley "helped the child off the street and onto a sidewalk," but "stumbled and moved slowly." The officer called for non-emergency assistance.

The crime of neglect of a child requires that the offender neglect a child "willfully or by culpable negligence, but does not require bodily harm. The State must prove that the defendant "acted with 'a gross and flagrant character, evincing reckless disregard for human life,' or an 'entire want of care which would raise the presumption of indifference to consequences; or such wantonness or recklessness or grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others, which is equivalent to an intentional violation of them.'"

While Kelly was "severely intoxicated, he never left the child's side," and, when the officer honked the second time, "Kelley help[ed] the child onto the sidewalk. Thus, his actions did not indicate an entire lack of care. . . . Kelley's mere physical presence guaranteed the child was not pushing his scooter down a road unattended. His presence also increased the child's visual profile and acted as a possible barrier between the child and a vehicle."

Although the road was a main thoroughfare," except for rush hour traffic, "the road was lightly trafficked." Traffic was light at the time in question. The Court noted a potentially different outcome in a case where the road in question was "a dangerous road."

One judge dissented.