Case Law Update
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First District Court of Appeal

I.M.W. v. State, 1D22-2378 (Aug. 5, 2022)

The First District granted a habeas corpus petition because the trial court failed to make required findings under Fla.R.Juv.P. 8.150(c)(6). No facts are set forth, but a prior decision of the Florida Supreme Court was cited for the point that "the trial court must determine whether the defendant willfully violated the court's order because intent is an essential element of contempt."

Davis v. State, 1D22-325 (Aug. 3, 2022)

The Court cited its prior decision in Williams v. State, 143 So. 3d 423 (Fla. 1st DCA 2014), for the point that the decisions of the United States Supreme Court, in Alleyne v. United States, 570 U.S. 99 (2013), and Apprendi v. New Jersey, 530 U.S. 466 (2000), are not applicable to Florida's Prison Releasee Reoffender statute.

Second District Court of Appeal

Kohutka v. State, 2D21-808 (Aug. 3, 2022)

The Second District reverse the denial of a Rule 3.850 motion, after an evidentiary hearing, as to one claim, and ordered further proceedings on remand.

Kohutka alleged that counsel was ineffective for having "misadvised him that he faced a maximum of fifteen years in prison when he actually faced up to thirty years in prison as a HVFO." He alleged that as a result, he rejected the State's offer of five years, and that he would have accepted it if he had known that he was subject to a potential sentence of 30 years as a HVFO.

At the evidentiary hearing, trial counsel could not recall discussing the HVFO designation with he defendant prior to the trial. Kohutka testified that defense counsel had mentioned PRR sentencing, but did not mention the HVFO sentence prior to the day of the trial, by which time the five-year offer had already been rejected and was no longer an offer the State was willing to abide by. He testified

that counsel told him that the maximum sentence he could receive was 15 years. Although he admitted to having received notices related to PRR and HVFO sentencing previously, he did not understand what they meant and since his attorney discussed only the PRR sentencing, he thought "that that's all that that was."

The trial court, in its order, did not address the deficiency prong of a claim of ineffective assistance of counsel. As to prejudice, the trial court concluded that its explanation of PRR and HVFO sentencing to the defendant overcame any deficiencies of counsel. That was erroneous, however, as the trial court's explanations regarding sentencing occurred after the State's plea offer had been rejected. For claims regarding misadvice with respect to a plea offer, prejudice "is determined based upon a consideration of the circumstances as viewed at the time of the offer and what would have been done with proper and adequate advice." "On remand, the postconviction court must limit its consideration of the *Strickland* prejudice prong to the facts as they existed at the time Kohutka rejected the offer."

The trial court had also concluded that the "only possible remedy" at this point in time "would be a directive to the State to renegotiate yet again," and that prejudice did not exist because of that. The Second District found that that was "mistaken as a matter of law." Potential remedies "may vary according to the circumstances and 'should be "tailored to the injury suffered from the constitutional violation."'" It was, however, premature for the Second District to "prescribe the remedy that should apply here before the postconviction court properly conducts a complete prejudice analysis."

<u>Third District Court of Appeal</u>

Bresile v. State, 3D21-424 (Aug. 3, 2022)

The Third District affirmed an order revoking probation. Although hearsay evidence is admissible at a probation revocation proceeding, revocation requires that the hearsay be corroborated by non-hearsay.

This case presented such a combination of hearsay and non-hearsay. The hearsay statements were those of the alleged minor victim of a sexual battery, who had recanted her accusations prior to the revocation hearing. The non-hearsay testimony was from a DNA analyst "regarding the presumptive positive findings of saliva on Bresile's penile swab."

Henderson v. State, 3D21-1876 (Aug. 3, 2022)

The Third District affirmed an order in a sexually violent predator civil commitment case in which the lower court found, "following a statutorily mandated annual review, that Henderson continues to meet criteria for civil commitment. . . ." With respect to a claim of ineffective assistance of counsel that had been asserted, the Third District affirmed it without prejudice to filing it in a habeas corpus petition pursuant to rule 4.460, Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators.

Jordan v. State, 3D21-2075 (Aug. 3, 2022)

The Third District granted a habeas corpus petition in which a pro se prisoner raised a sentencing issue that had previously been rejected in prior challenges.

Jordan was convicted of burglary with an assault or battery and robbery. The trial court subsequently vacated the original sentence. Believing that it was obligated to reimpose a life sentence for the burglary, the court did so, in his absence, to concurrent terms of life and 30 years as a habitual violent felony offender. The trial court, however, erroneously believed that the life sentence was mandatory; the HVFO life sentence was permissive. The erroneous belief of the sentencing court in this case resulted in a manifest injustice. The case was therefore reversed and remanded for reconsideration of the sentence. Jordan was entitled to be present and to be represented by counsel at the resentencing hearing.

Willis v. Jones, 3D22-1330 (Aug. 5, 2022)

The trial court conducted an Arthur hearing and found that the proof was not evident nor the presumption great. Nevertheless, the court ordered Willis held without bond. The Third District granted a habeas corpus petition and directed the trial court to conduct a pretrial release hearing pursuant to rule 3.131, within three business days of the opinion.

Fourth District Court of Appeal

Skirdulis v. State, 4D21-2380 (Aug. 3, 2022)

An assessment of investigative costs of $35 was reversed because it had not been requested by the State or an appropriate agency. Prosecution costs assessed at $100 were reversed because assessments in excess of $50 per case for a

misdemeanor require sufficient proof of higher costs incurred, and findings supporting the higher amount had not been made.

Fifth District Court of Appeal

State v. Phipps, 5D21-2026 (Aug. 5, 2022)

The trial court erred in suppressing evidence obtained from court authorized wiretaps.

A wiretap order , based on the Statewide Prosecutor's application, set forth an old phone number for the target, with an incorrect area code. Subsequently, after the written authorization was signed by the Statewide Prosecutor, the error was discovered the next day and an amended authorization containing the correct number, consistent with the affidavit and probable cause document, was obtained.

Phipps argued that the interception was not properly authorized by the prosecutor because "no authorization for the correct phone number occurred until after the order allowing the wiretap was already signed." The lower court suppressed the evidence on the basis of that contention, and the First District disagreed with it. Chapter 934 "identifies specific individuals who may authorize an application for an order approving the use of a wiretap," including the Statewide Prosecutor. "Notably absent from this statute is any requirement governing the format of such authorizations. Specifically, there is nothing requiring that an authorization be in writing, let alone in a contemporaneous writing officially printed and signed before the order is sought. Nor does the statute in any way provide that technical defects in an authorization will invalidate law enforcement's ability to execute wiretaps otherwise lawfully authorized and approved."

Maldonado v. State, 5D21-2801 (Aug. 5, 2022)

An order revoking probation was remanded for correction because it failed to list the specific conditions of probation that had been violated.