Case Law Update
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Supreme Court of Florida

State v. Mullens, SC19-1587 (Aug. 31, 2022)

The trial court partially granted a postconviction motion in a capital case and granted a new penalty phase based on a "finding that counsel was deficient in investigating and presenting mitigating evidence." The State appealed that ruling, and Mullens appealed the denial of relief as to the conviction itself. The Florida Supreme Court reversed the order granting the new penalty phase.

The trial court erred in finding counsel deficient "for presenting only speculative evidence of sexual battery." The defense presented two expert witnesses in the postconviction hearing who "believed Mullens's sexual-abuse allegations. . . ." The postconviction court "did not identify any objective evidence available to trial counsel that would have corroborated the sexual-battery allegations or that should have been provided by counsel" to the experts.

The postconviction court relied on expert testimony that Mullens "suffers from PTSD, FASD, and possibly traumatic brain injury." When the lower court found counsel deficient for not developing such information for the penalty phase, that "court contradicted the principle that counsel is entitled to rely on a qualified expert even when postconviction experts later disagree with that expert's opinion." Trial counsel had retained an expert who reviewed extensive records, spoke with Mullens at least 12 times, interviewed family members and conducted several tests. That doctor ruled out PTSD and other mental conditions other than a bipolar disorder, a personality disorder, and polysubstance dependency.

The expert retained for the penalty phase had also found that Mullens had an IQ of 83, and that would have been a "significant, if not insurmountable, obstacle to success on an intellectual-disability claim." Additionally, two experts were retained for the original penalty-phase, one of whom testified, and both did thorough examinations and reviews of materials, and neither recommended neuropsychological testing. Counsel was therefore not deficient for failing to obtain a neuropsychologist.

A claim that counsel should have "better supervised" the expert retained for the penalty phase was rejected on the basis of a federal appellate court holding which concluded: "If an attorney has the burden of reviewing the trustworthiness of a qualified expert's conclusion before the attorney is entitled to make decisions based on that conclusion, the role of the expert becomes superfluous."

The Court alternatively found that even if counsel performed deficiently, prejudice did not exist. The trial court, when imposing sentence, found three aggravating circumstances – previous conviction of violent felonies (contemporaneous murders and attempted murder in this case); murders during the course of an armed robbery; and murder committed to avoid arrest. The sentencing court had found two statutory mitigators – substantial impairment and extreme emotional disturbance, and six nonstatutory mitigators. Despite the substantial mitigation, the sentencing court found that the aggravators "far outweighed" the mitigators. Based on those underlying facts, there was no reasonable probability that the new evidence proffered in the postconviction proceeding "would have altered the balance of aggravating and mitigating circumstances." The experts' opinions were contradicted by substantial evidence at the postconviction hearing. Those experts' opinions lacked corroboration. All of the postconviction diagnoses other than bipolar disorder, lacked support in pre-penalty-phase records. Other postconviction opinions "lacked specific details as to Mullens's mindset at the time of the murders." This led to the paradox where the lower court faulted the trial expert for not obtaining such information, while the postconviction experts had not obtained it either.

In the cross-appeal, the Supreme Court rejected the claim that counsel was ineffective for advising Mullens "to plead guilty and waive a penalty-phase jury." The main argument was that counsel "failed to discover jail documents showing that he was on an antipsychotic medication in the roughly 18 months leading up to his guilty pleas." The record, however, showed that defense counsel was aware of the medication, "regardless of the jail's documentation." And, while Mullens relied on a current expert's opinion about the effects of that medication on Mullens, other evidence supported the finding that the medication "did not undermine his ability to enter voluntary guilty pleas." There was evidence "that the medication improved Mullens's ability to think, communicate, and obey jail staff." Staff testified that Mullens "appeared lucid while on the mediation." In the plea colloquy, Mullens "acknowledged the positive effects of the medication."

Two justices dissented from the Court's opinion regarding the failure of defense counsel to develop further mental health mitigation evidence for the penalty phase.

Gordon v. State, SC20-284 (Sept. 1, 2022)

The Court affirmed convictions and sentences of death for two first-degree murders.

A claim that the State's peremptory challenge of juror James was racially motivated and that the reasons for the challenge were pretextual was not properly preserved for appellate review. The prosecutor proffered two reasons for the challenge – first, that the juror stated, "I'm not God"; second, that her first cousin had been sentenced to 25 years in prison. Defense counsel then objected that those reasons were "insufficiently race-neutral." The Supreme Court observed that the reasons were facially race-neutral, and Gordon's objection did not "put the trial court on notice of the argument he advances here – that the State's facially race-neutral reasons were pretextual, and why."

Gordon further compared juror James's voir dire responses "with responses of allegedly similarly situated venire members who ultimately served on the jury. But he makes this comparison for the first time before us; Gordon failed to preserve for review a comparative analysis of venire members' responses to voir dire." "Despite multiple opportunities during jury selection, he failed to make that comparison, or to provide, in a manner amenable to our review, an explanation for why the State's proffered reasons for striking James were pretextual. For example, when the State accepted without objection each of the venire members who gave similar voir dire responses to James, Gordon could have noted that the State did not strike people who had similar, or closer, relationships with incarcerated people than James."

In finding that the evidence was sufficient with respect to the premeditation element of attempted first-degree murder, the Court's opinion includes a lengthy discussion on the nature of premeditation, including the brief time required to formulate the requisite intent. Ample evidence supported the existence of sufficient time to reflect "upon his plan to flee and realize the danger to others inherent in his plan. Gordon had been a part of a high-speed police chase in the hours before the murders, so he knew officers were actively pursuing him. The jury heard that officers had shone flashlights through the windows of 618 Astor Drive onto the women's bodies, then shouted to one another outside of the house upon discovering the

victims' bodies. From this evidence, the jury could permissibly infer that Gordon knew officers had tracked him down and surrounded the house."

With minimal discussion, the Court also noted and rejected arguments that had been rejected in prior cases – the lack of a requirement for comparative proportionality review of death sentences; a "trial judge need not mention every relevant piece of evidence in mitigation to properly weigh aggravating and mitigating factors;" the "Eighth Amendment's prohibition of cruel and unusual punishment does not require a categorical bar against the execution of persons who suffer from any form of mental illness or brain damage."

First District Court of Appeal

Grimes v. State, 1D21-3813 (Aug. 31, 2022)

The failure of a written sentencing order to include the orally pronounced provision that probation would terminate upon completion of probation conditions was a "sentencing error" that could be raised in a Rule 3.800(b) motion pending the direct appeal, but the 3.800(b) must be filed prior to the filing of the initial brief of appellant. Appellate counsel filed an Anders brief in this case, without raising any alleged errors. The First District, on its own, struck the initial brief of appellant, thereby allowing counsel for the appellant to raise this sentencing error, plus one error regarding cost assessments, in a pre-brief motion to correct sentence under Rule 3.800(b).

Second District Court of Appeal

Hosner v. State, 2D20-1344 (Aug. 31, 2022)

The Court's opinion did not set forth any facts of the case, but affirmed, providing parenthetical citations of prior decisions of United States Supreme Court and others, for the holding that promissory notes were securities under Florida's securities regulation act, and for the point that the Supreme Court's Howey test, which defines an "investment contract" under the federal securities law, was not relevant to the determination of whether the issuer of a promissory note failed to rebut the presumption that the note was a security. The Howey test for an investment contract did not apply to other types of instruments that were specifically enumerated in the securities act.

Taylor v State, 2D22-1186 (Aug. 31, 2022)

The Second District affirmed an order denying an application for a sentence review hearing under Fla.R.Crim.P. 3.802.

In 2007, Taylor had been sentenced to life imprisonment for first-degree murder and 30 years in prison for an attempted robbery. He was 17 at the time of the offenses and he was resentenced in 2017 to life in prison with judicial review after 25 years for the murder conviction. In February 2022, he sought judicial review of the attempted robbery sentence.

The attempted robbery was committed prior to July 1, 2014, and, pursuant to section 921.1402(1), Florida Statutes, judicial review would be available only if the originally imposed sentence was unconstitutional. As the 30-year sentence (with a 20-year mandatory minimum), was not the functional equivalent of a life sentence, it was not unconstitutional, and there was no entitlement to judicial review.

Third District Court of Appeal

Darling v. State, 3D22-0697 (Aug. 31, 2022)

Darling was sentenced, after a jury trial, to a minimum mandatory term of 20 years for aggravated assault, and 30 years for manslaughter. The jury found that he discharged a firearm during the commission of the offenses. In a subsequent motion under Rule 3.800(a), he argued that the firearm was an essential element of both crimes, that the convictions were improperly reclassified, and that his sentences exceeded what was authorized by statute. The Third District disagreed and affirmed the denial of his motion.

The 20-year term of imprisonment for aggravated assault was not the result of a reclassification. Rather, it was a mandatory minimum sentence under the 10-20-Life statute, based upon the discharge of the firearm. Next, the use of a firearm is not an element of the offense of manslaughter. When the firearm is found to have been used during the commission of the crime, manslaughter is properly reclassified as a first-degree felony.

Ramirez v. State, 3D22-1014 (Aug. 31, 2022)

A Rule 3.800(a) motion to correct an illegal sentence could not be used to challenge the validity of an underlying conviction, as opposed to the legality of the

sentence. Ramirez argued that his conviction and ensuing sentence were invalid because they resulted from an unlawful reverse-sting operation. That claim was not cognizable in a Rule 3.800(a) motion and the order denying the motion was affirmed.