Case Law Update
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Supreme Court of Florida

Mosley v. State, SC20-195 (Sept. 15, 2022)

Mosley appealed from the sentence of death imposed at a second penalty phase trial, which sentence was imposed for the murder of his ten-month-old son. The Florida Supreme Court again reversed the sentence and remanded for another sentencing hearing under Spencer v. State, 615 So. 2d 688 (Fla. 1993). The Spencer hearing is the hearing that is held after the penalty-phase trial, prior to the imposition of sentence.

Prior to the second penalty phase proceeding, Mosley moved to represent himself. After the trial court granted his motion, the court appointed standby counsel and a mitigation expert. The court then reversed itself "when it found that Mosely did not understand what giving up his right to counsel entailed." The court then announced that it was taking the motion to proceed pro se under advisement.

A successor judge then took over the case and Mosely renewed his motion to represent himself. At a hearing on the motion, however, he "stated that he did not want to represent himself nor to be represented by his attorney at the time." The request for new counsel was denied and the motion to appear pro se was withdrawn.

At the final pre-penalty-phase conference, Mosley again moved to represent himself. Another Faretta hearing was held and the motion was granted, and standby counsel was appointed. The court then denied Mosely's request for an 18-month continuance to prepare for trial.

After the penalty-phase trial, the judge offered Mosley counsel for a Spencer hearing and Mosley accepted the appointment, but, days prior to the hearing, he filed an "Unequivocal Demand to Immediately Represent Myself Pro Se." During the Spencer hearing, the prosecutor referenced this motion and asked the court to address it. The judge said that he intended to do so, but then proceeded to address a different motion – one seeking a new penalty phase trial due to numerous alleged errors. The judge never returned to, and never ruled on, the demand for self-representation. The court denied the motion for a new penalty-phase trial and

addressed the issue of representation of the defendant on appeal and imposed the death sentence.

The failure of the judge to address the motion for self-representation at the Spencer hearing required reversal for a new Spencer hearing. Although the Court deemed the motion to be untimely with respect to the Spencer hearing, it still applied an abuse-of-discretion standard. As the sentencing judge never addressed the motion for self-representation, there was no basis for the Supreme Court to assess whether there was any abuse of discretion with respect to that motion.

One justice dissented on the basis of the untimeliness of the motion and would not have applied the abuse-of-discretion standard on these circumstances.

First District Court of Appeal

Khayrallah v. State, 1D19-2407 (Sept. 14, 2022)

The First District affirmed, without written opinion a conviction for electronically submitted to the clerk of the court a written threat directed to the chief judge of the circuit. One judge wrote a concurring opinion, addressing, at length, the sufficiency of the evidence. The concurring opinion quotes the threat, verbatim. Amidst the profanity-laden message, were the words that the defendant was "coming for your no good . . . ," and "I'm coming to Deal with you." The concurring judge expressly found that the words constituted a threat, and further found that the message had been "sent" to the victim judge although routed through the Clerk's office. The statute prohibiting such threats "does not make a completed crime depend on whether the threatened person ever receives the communication or is affected in some way by it."

Knapp v. State, 1D21-1539 (Sept. 14, 2022)

The First District affirmed the denial of a suppression motion.

A deputy sheriff stopped Knapp's vehicle because "the rear window of her car was materially obstructed. The entire lower half of the rear window was blocked by items including a row of several pairs of shoes, with the middle particularly blocked with a mound of pillows or blankets up to within a short distance from the car's roof."

The resolution of this case hinged on the interpretation of section 316.2004(2)(b), Florida Statutes (2021), which prohibits the driving of a motor vehicle "with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which materially obstructs, obscures, or impairs the driver's clear view of the highway or any intersecting highway." Knapp argued that "the rear-view mirror was visible through the back window, and therefore the obstruction did not rise to the level of materiality that the statute would prohibit." This argument construed the statute as prohibiting "only blocking rear windows with items like those listed in the statute – signs, posters, and other nontransparent materials – and that such materials would have to be 'upon' the window and blocking virtually all rearward visibility, to violate the statute."

The First District disagreed with Appellant's construction of the statute and held, alternatively, that even if the deputy misinterpreted the statute, "the mistake would be objectively reasonable," as the items in the rear window were obstructing, obscuring or impairing rear visibility "as much as – if not more than – a sign, poster, or similar object in the same area."

Verasso v. State, 1D21-2375 (Sept. 14, 2022)

The First District issued an "opinion on motion to supplement the record on appeal." The reason for the published order was to discourage the practice of filing multiple supplemental records on appeal. The Court urges counsel to order all of the necessary transcripts at an early opportunity and to address the insufficiencies of the record through a single motion to supplement record on appeal.

Armstrong v. State, 1D21-2478 (Sept. 14, 2022)

The Court issued an affirmance without written opinion in an appeal from a sentence upon revocation of probation. A dissenting judge authored a written dissent asserting that jurisdiction was lacking because the appeal was untimely.

The dissent addressed the perceived issue of whether the time for filing the notice of appeal was tolled as a result of the filing of a motion to withdraw admission to the probation violation, which motion was filed after the filing of the written sentence and revocation orders. The dissent perceived this motion to withdraw as a nullity, finding no rule or statute authorizing the filing of such a motion, thus resulting in the lack of tolling due to that motion.

Davis v. State, 1D22-1922 (Sept. 14, 2022)

Davis filed a pro se petition for writ of prohibition, seeking a stay of the trial court prosecution, as well as an order directing the lower court to preserve certain information, and an order compelling the trial court to conduct a Nelson hearing.

The First District wrote an opinion to note that Davis had the right to file the writ petition even though he was represented by counsel in the trial court because a motion to discharge court-appointed counsel was pending in the trial court. The First District agreed, and it did not matter that the petition filed in the appellate court was the pleading in which the petitioner was seeking the discharge of appointed counsel.

Other than that, the opinion redesignated the petition as a mandamus petition and denied all requested relief without addressing the substantive issues.

Second District Court of Appeal, 2D18-4289 (Sept. 16, 2022)

Carrion v. State, 2D18-4289 (Sept. 16, 2022)

The Second District, on motion for rehearing, withdrew its prior opinion and issued a new opinion.

The Court affirmed multiple convictions and sentences without comment and addressed only the claim that the judgment should be corrected to reflect that the defendant was found guilty by a jury. The issue had not been preserved in the trial court and resulted in an affirmance, without prejudice to assert in an appropriate postconviction motion.

The judgment contained a scrivener's error, stating that Carrion had been found guilty by a jury. The Court concluded that the error could be preserved on appeal through a rule 3.800(b) motion. Although the rule applies to "sentencing" errors, the commentary to the rule also references scriveners' errors in the judgment. Carrion had argued that rule 3.800(b) was not applicable. Even if that were correct, he was still not entitled to relief because he did not argue that the scrivener's error on the face of the judgment was fundamental error, and section 924.051(3), Florida Statutes, precludes an appellant from raising an unpreserved, non-fundamental error on direct appeal for the first time.

The Court certified to the Florida Supreme Court a certified question of great public importance:

> DOES SECTION 924.051(3), FLORIDA STATUTES (2021), OR THE COMMON LAW CONTEMPORANEOUS OBJECTION RULE PROHIBIT AN APPELLATE COURT FROM NOTING AN UNPRESERVED SCRIVENER'S ERROR WHICH IS APPARENT ON THE FACE OF A JUDGMENT OR SENTENCE AND DIRECTING THE TRIAL COURT TO CORRECT THE ERROR UPON REMAND?

One judge, partially concurring, did not agree that Rule 3.800(b) could be used, concluding that the rule applies only to "sentencing" errors, and the scrivener's error on the judgment was not a sentencing error.

Xenes v. State, 2D21-977 (Sept. 16, 2022)

The Court's citation opinion affirmed the lower court, and cited the Court's own opinion in State v. Stahl, 206 So. 3d 124 (Fla. 2d DCA 2016), while also noting Garcia v. State, 201 So. 3d 1051 (Fla. 5th DCA 2020), for which the Florida Supreme Court granted review based on a certified conflict between Garcia and Stahl, on "questions related to whether defendants can be compelled to orally disclose a smartphone passcode."

Tillman v. State, 2D21-1269 (Sept. 16, 2022)

The Second District corrected errors in the written sentence that did not conform to the oral pronouncement regarding jail credit. Tillman entered a plea in multiple cases, involving probation violations plus several new cases with charges of failing to register as a sex offender. Some of the sentences ran concurrently, others were consecutive.

The plea agreement did not address jail credit. When pronouncing sentence, the judge stated that credit for all time served would be awarded on six counts for one of the case numbers, but the credit did not appear on the written sentence. During the pendency of the direct appeal, the trial court denied a Rule 3.800(b) motion in which this claim had been raised, concluding that Tillman was only entitled to jail credit "on the first of the consecutive sentences."

Tillman did not contest the trial court's legal rationale regarding entitlement to the jail credit. "Rather, he contends that regardless of whether he was entitled to

the jail credit, since the trial court orally pronounced the award the written sentences must be corrected to comport with the oral pronouncement." The Second District agreed.

Moore v. State, 2D22-298 (Sept. 16, 2022)

The Second District reversed the summary denial of a Rule 3.800(a) motion and remanded for resentencing.

Moore had been convicted of armed burglary and 35 counts of grand theft of a firearm using a motor vehicle as an instrumentality. His lowest permissible sentence under the Criminal Punishment Code was 66 years in prison. A substantial assistance agreement provided that the court would impose a downward departure sentence between 11 and 23 years plus 10 years of probation. If Moore breached the agreement, the court could sentence him up to the statutory maximum of life in prison.

Upon a breach of the agreement, the court imposed a sentence of 40 years for the burglary, concurrent with 40 years for all of the grand thefts. Moore argued that this was an illegal "general sentence" as to all 36 counts. The Second District disagreed in part, as to the burglary. The burglary was sentenced "in a separate section of the sentencing order, apart from the other counts. Therefore, it was not part of a general sentence on multiple counts."

As to the 35 grand thefts, "[r]ather than imposing an individual sentence for each grand theft count, the sentencing order imposed a single sentence of forty years listing counts two through thirty-six." Although the written sentence referenced "each count concurrent," that did not "cue the trial court's failure to delineate a specific sentence for each count." Similarly, the trial court's oral pronouncement was deficient as the judge simply stated that the defendant was being sentenced to 40 years.

Third District Court of Appeal

J.D. v. State, 3D21-1055 (Sept. 14, 2022)

The Third District, on the basis of several of its own prior decisions, reversed an adjudication of delinquency "[b]ecause the trial court did not make case-specific findings as to why proceeding with the adjudicatory hearing remotely was

necessary." J.D. had objected to the remote proceeding prior to its commencement, asserting a due process violation.

Fourth District Court of Appeal

Baker v. State, 4D20-2112, et al. (Sept. 14, 2022)

The Fourth District reversed the defendant's sentence in a Rule 3.800 appeal. The Criminal Punishment Code scoresheet resulted in a lowest permissible sentence of 28.3 years, but the court sentenced the defendant to 40 years on all charges. After the Rule 3.800 motion, the court resentenced the defendant to 480 months on 22 charges of possession of pornography.

As the sentencing points exceeded 363, the court, under section 921.0024(2), had two options: life sentences or sentences of 28.3 years in prison, the lowest permissible sentence). "On remand, the court must sentence appellant to the calculated LPS of 28.3 years on all counts to be served concurrently, because any other sentence, including a consecutive sentence, would be greater than appellant's original sentence."

Robinson v. State, 4D22-1064 (Sept. 14, 2022)

The evidence was insufficient to sustain convictions for driving while a license was suspended with knowledge, under section 322.34(2)(a), Florida Statutes.

Robinson's driving record reflected a "valid" license with an "issue date" of October 10, 2020. The prior record included a suspension sanction for failure to pay in April 2012, and notice was provided on March 28, 2012. Robinson had been homeless prior to 2020 and there was no testimony regarding his address in 2012. He denied knowledge of the 2012 suspension and the driver's record, which was admitted into evidence, did not demonstrate that he was sent notice. The "driving record did not provide where the suspension notice was sent at the time of mailing and there was no evidence of Appellant's last known address on file with DHSMV in 2012. The only address listed on the driving record was an address from 2020."

Fifth District Court of Appeal

Winters v. State, 5D22-818 (Sept. 16, 2022)

On rehearing, the Fifth District issued a new opinion, reversing the summary denial of a Rule 3.850 motion, in part, and affirming in part. A claim based on juror misconduct should have been procedurally barred by the trial court because it was a claim that could have been raised on direct appeal. There was no entitlement to amend the motion because the trial court did not find the motion insufficient on its face. For claims that are found to be conclusively refuted by the record, there is no entitlement to the filing of an amended motion.

The summary denial of three other claims was reversed. The trial court erred in concluding that a claim of the State's failure to disclose favorable evidence was not cognizable in a Rule 3.850 motion. Two other claims were denied and the trial court referenced various court records to support the denial, but those documents were not attached to the lower court's order.