Case Law Update
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First District Court of Appeal

Hartman v. Department of Corrections, 1D20-2332 (Nov. 9, 2022)

The trial court denied a mandamus petition in which Hartman challenged the Department of Correction's refusal to award gain-time because Hartman was ineligible for additional gain-time past the 85% service date on each of his sentences. Hartman sought further review in the First District through a certiorari petition, and the First District treated that petition as a direct appeal and affirmed the denial of additional gain-time.

Hartman was serving several consecutive sentences. Under section 944.275(4)(b)(3), Florida Statutes, an inmate must serve 85% of a sentence imposed and gain-time can not reduce the time served below that. Hartman had already received gain-time allowances which would permit release when he served 85% of each of his consecutive terms of imprisonment. The appellate court reviewed the statutory language and concluded that a plain reaching "reveals that the 85% rule applies to each consecutive sentence, not the overall sentence term."

In a separate argument, Hartman challenged DOC's adjustment of the sentence by removing 1008 days of jail credit which DOC concluded the trial court erroneously granted. DOC maintained that it had authority to "correct errors in the computation of sentences when they are discovered." The First District agreed. "[T]he Department has a duty to correct any mistakes in applying the sentence."

Knight v. State, 1D20-3016 (Nov. 9, 2022)

The First District affirmed a conviction for second-degree murder.

Over objection by the defense, the prosecutor argued to the jury "that Knight had refused to answer certain questions from law enforcement, that he never denied being guilty, and that he never answered 'the hard questions.'" These comments did not constitute improper comments on the right to remain silent. The right to silence did not apply "since Knight waived his right against self-incrimination when he voluntarily answered Detective Alverson's questions."

"In both interviews, Knight was cautioned about his rights to have a lawyer present and to not answer questions. Instead, he chose to respond to many of Detective Alverson's questions and to engage with her during the interrogations. There were times throughout when he just sat silently in the face of a difficult question, but he did not indicate during these times that he wanted to terminate the interviews. These intermittent stops and starts during the interrogations – choosing to answer some questions and responding in non-verbal ways to others, but sometimes just not responding at all to other questions – do not constitute a re-invoking of the rights he waived by talking."

A related unpreserved claim of ineffective assistance of counsel was not reached on appeal because it did not allege fundamental error.

State v. Richmond, 1D21-1866 (Nov. 9, 2022)

The First District granted a certiorari petition and quashed a county court order which sustained Richmond's objection to a subpoena for medical records. The State established both relevancy and a compelling interest to obtain the subpoena.

Richmond had been observed, midi-morning, driving erratically, crossing a dividing line and going back and forth for about two miles. After his car was stopped, an officer smelled alcohol and saw an open alcohol container in the center console cupholder. While Richmond admitted having three beers, he also said he had diabetes and had taken insulin that morning. Paramedics arrived and had him transported to an emergency room for treatment due to high blood sugar. Blood was drawn during his stay at the hospital.

The records in question "were directly related to the incident which led to the charges against Respondent, as well as the ongoing criminal investigation."

Martin v. State, 1D21-2113 (Nov. 9, 2022)

The First District affirmed a conviction for attempted first-degree murder, finding that arguments raised on appeal were not preserved for review and did not constitute fundamental error.

Martin argued that the trial court erred in denying a request for recross-examination. This claim was based on a purported policy of the trial court precluding recross-examination. Martin, however, did not proffer or attempt to

proffer the questions he would have asked on re-cross examination and it was not apparent on the face of the record what he would have asked or how the questions would have been answered. Furthermore, the judge's statement that "there is no recross" could not be viewed as a policy of the court; it "could have meant that recross was not warranted absent new material developed on redirect examination." The First District further went through the record and detailed the facts showing that "no new matter was raised on redirect."

Martin also argued that the court erred in overruling an objection to a portion of an officer's body camera footage which "depicted the victim's wife telling the police that the victim wanted to see is three children." The objection was not based on the footage eliciting sympathy for the victim. Initially, when the footage was introduced, defense counsel stated that there was no objection. After the first clip was played, counsel objected on the basis of not having heard the first portion of the audio. That objection was overruled, and there was no objection based on an appeal to sympathy. A pretrial motion in limine had not challenged any portion of the footage and did not preserve the argument raised on appeal. Fundamental error did not occur as the "verdict could have been obtained without the alleged error in admitting the statement that the victim had 'three babies inside he wants to see.' Not only was it a brief, isolated reference to the victim's desire to see his children, Sergeant Haas responded by changing the subject, asking about Martin's whereabouts, and directing the other officers to set up a perimeter." "Nor was the evidence so weak that it required the jury's sympathy to obtain a guilty verdict."

Howard v. State, 1D21-3340 (Nov.9, 2022)

An appeal from a previously ordered resentencing resulted in an affirmance as to the denial of a request for a downward departure. The sentencing issues raised were not raised during sentencing or through a Rule 3.800(b) motion during the pendency of the appeal and prior to briefing. "Additionally, this Court lacks authority to review a trial court's decision denying a downward departure, where there is no evidence that the trial court misconstrued its discretion to depart or had a blanket policy of refusing to exercise such discretion."

McNeill v. State, 1D22-942 (Nov. 9, 2022)

McNeill's sentence was affirmed in part and reversed in part. He was sentenced to 30 years in prison for armed robbery, a first-degree felony. He was sentenced as a prison releasee reoffender and was also adjudicated a habitual felony

offender. There was, however, no extended term based on the HFO sentence, as the 30-year sentence has already been mandated as a PRR.

The State conceded on appeal that the HFO designation was in error and the Court agreed. "Because the appellant's sentence of thirty years in prison is coterminous with the mandatory minimum imposed on the appellant as a PRR, there has been no enlargement of the appellant's sentence based on the HFO adjudication. That makes the trial court's sentencing of the appellant as an HFO illegal."

Worrell v. State, 1D22-2011 (Nov. 9, 2022)

The First District issued a published pre-decision opinion for the purpose of reminding lower court clerks that they are required, in appeals from summary denials of postconviction motions, to prepare and file a paginated record on appeal, along with an index to that record on appeal.

Second District Court of Appeal

Landrum v. State, 2D20-3480 (Nov. 9, 2022)

Landrum was sentenced, at a resentencing hearing, to life without judicial review after 25 years. The Second District found that "it was error for the resentencing court to make the finding that Ms. Landrum intended or attempted to kill the victim" and the life sentence was remanded for a further resentencing.

Landrum was sentenced to life in prison for the murder of her boyfriend; Landrum was 16 years old at the time of the offense. The jury was instructed on a principal theory and was "not required to indicate whether its verdict of guilty for the second-degree murder offense was based on Msl Landrum's having committed it as a principal or not. Nor was it asked to determine whether Ms. Landrum actually killed, intended to kill, or attempted to kill the victim."

Pursuant to the statutes governing the sentencing of juveniles as adults, an entitlement to judicial review after 25 years for this offense existed only if there was a valid finding that the defendant "did actually kill, intend to kill, or attempt to kill the victim." If not, there was an entitlement to judicial review after 15 years.

At resentencing, the trial court had acknowledged that the jury did not make the required findings in this case, but applied harmless error analysis to conclude that the facts of the case supported such a finding. The Second District rejected that

conclusion, joining the Third and Fifth Districts in holding that harmless error is a "standard that is applicable in the reviewing court; it is not the standard employed by the trial court during resentencing." A de novo resentencing hearing was mandated on remand. The Court also noted that a case is currently pending in the Florida Supreme Curt on the issue of whether "the State can empanel a new jury to determine whether the defendant actually killed, intended to kill, or attempted to kill the victim." That issue was neither raised nor briefed in this appeal and was therefore not addressed.

Stroud v. State, 2D21-2234 (Nov. 9, 2022)

The Second District reversed a drug-possession conviction. The "contraband was found as the result of an illegal stop and the State failed to show an unequivocal break between the illegal stop and Stroud's alleged consent to search."

Stroud was spotted acting "very strangely" near a parking lot around some businesses. He was "talking to himself," "flailing his arms," and "walking around in circles." He was observed by officers putting a pocketknife in his front pocket. An officer approached him and Stroud put his hands up and the officer stated: "Hey, do me a favor? Keep your hands – have a seat. Sit down." Stroud sat down.

The officer approached him and stood over him and asked what Stroud put in his pocket. Stroud responded that it was a pocketknife, and the officer said: "I'm just going to grab this pocketknife from you. Okay?" The officer reached into the pocket and removed the knife. The officer then reached in again and searched, but removed is hand and asked what else Stroud had on him. Stroud responded that it was just tobacco, and the officer said: "Mind if I check?" Stroud responded, "Yes sir," but the officer had already had his hand in Stroud's pocket again, and then asked, "Yes, I can check?," to which Stroud responded: "What --." The officer removed a phone charger and some loose cigarettes. A second officer arrived and reached into the other pocket and removed a wallet, which contained a "tiny bit of meth."

The officers testified that they did not suspect any criminal activity when directing Stroud to sit. Absent such reasonable suspicion, the detention was unlawful. As a result, "he could not have been deemed to have voluntarily consented to the subsequent searches of his pockets or his wallet because consent given after illegal police activity is presumptively tainted and rendered involuntary unless the State shows 'an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior official illegal action.'" No such showing was made here.

Arroyave v. State, 2D21-3497 (Nov. 9, 2022)

The summary denial of one claim in a Rule 3.850 motion was reversed for further proceedings because it was not conclusively refuted by the record.

The defendant alleged that counsel was "ineffective for failing to inform him that he would be subject to a twenty-five-year minimum mandatory term should he be convicted of attempted second-degree murder at trial." He argued that this lack of information led him "to reject a favorable plea offer of fifteen years' prison with a minimum mandatory term of ten years."

The trial court relied on the fact that the defendant knew that some mandatory minimum must have applied based on his own allegations about a 10-year mandatory minimum; and further, that at sentencing, he "did not react to imposition of the twenty-five-year minimum term." Such a lack of reaction "does not refute his claim that counsel" did not inform him of the 25-year minimum. And even if he had become aware of it after rejecting the plea offer, that would not cure the prior alleged failure of counsel.

Third District Court of Appeal

Coley v. State, 3D21-2439 (Nov. 10, 2022)

The Third District reversed an order denying a motion to withdraw plea; the State conceded error. The trial court had scheduled an evidentiary hearing on the motion and, at the hearing, the State cross-examined Coley and called defense counsel to testify against Coley. Coley was representing himself, including the cross-examining of defense counsel, and Coley challenged counsel's statements. As Coley and defense counsel took adversarial positions, the court was required to appoint conflict-free counsel.

Fourth District Court of Appeal

State v. Demons, 4D22-1874 (Nov. 9, 2022)

The Fourth District granted a petition for writ of prohibition. Demons was indicted for two counts of first-degree murder. The State filed a timely notice of intent to seek the death penalty, listing the aggravating factors that the State would rely on. In 2022, the State filed a superseding indictment, adding a sentencing

enhancement based on the promotion of interests of a criminal gang. The State did not file a new notice of intent to seek the death penalty.

Under Rule 3.181 and section 782.04(1)(b), a notice of intent to seek the death penalty must be filed within 45 days of the arraignment. When such a notice was not filed after the arraignment on the superseding indictment, the defense moved to preclude the death penalty and the court precluded the State for that reason.

The State timely filed its first notice of intent to seek the death penalty. "Nowhere does the statute or rule require the state, after a superseding indictment, to file an additional notification to the defendant that the state is seeking the death penalty. The statute and the rule are silent on requiring notifications on superseding indictments. Even assuming there was a theoretical reason to re-notify the defendant that the state is, once again, still seeking the death penalty when a superseding indictment merely adds a gang enhancement, the courts are without jurisdiction to add words to a statute which the legislature has not written." Moreover, the "filing of an amended indictment does not nullify or void the original indictment."

The Fourth District bolstered this construction of statutory language with reference to several rules of statutory construction, including the "omitted-case canon of construction," which asserts the principle "that what a text does not provide is unprovided." The Court also looked to the 'presumption against ineffectiveness," which presumption "ensures that a text's manifest purpose is furthered, not hindered."