Case Law Update
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Supreme Court of Florida

Morgan v. State, SC20-641 (Nov. 3, 2022)

Morgan was convicted for second-degree murder in 1979, an offense committed when he was a juvenile, and he received a sentence of life in prison with parole eligibility after 25 years. In 2016, based on then-existing decisional law from the Supreme Courts of the United States and Florida, Morgan challenged the sentence as an unconstitutional life sentence imposed on a juvenile. Morgan sought relief through a Rule 3.800(a) motion to correct illegal sentence.

The trial court granted the motion and ordered a resentencing hearing, but did not actually vacate the original sentence that had been imposed. Prior to the resentencing hearing, the Florida Supreme Court issued a decision holding that a juvenile's sentence of life in prison, with parole eligibility after 25 years, did not violate the Eighth Amendment. Pursuant to the State's motion, the trial court vacated the prior order which had granted the Rule 3.800(a) motion.

Morgan sought review in the Second District Court of Appeal, which held that "rule 3.800(a) proceedings are not final until a resentencing order is entered because prior to that point judicial labor is still required." The Second District certified conflict with decisions of the First, Fourth and Fifth Districts. Resolving the conflict, the Florida Supreme Court approved the decision of the Second District in Morgan and disapproved of the conflicting decisions of the other district courts of appeal. "[I]n rule 3.800(a) proceedings the process of sentence correction is not complete until an order is entered imposing a corrected sentence. Until that point, there is no final order. Judicial labor in the cause remains to be done, and an order granting a rule 3.800(a) motion is subject to reconsideration. In this respect, the structure of rule 3.800(a) is fundamentally different from rule 3.850, under which resentencing proceedings are separate and distinct from the prior proceedings that result in an order vacating a sentence."

Second District Court of Appeal

T.H. v. State, 2D20-3217 (Nov. 4, 2022)

On rehearing, the Second District issued a revised opinion addressing the validity of a remote juvenile adjudicatory proceeding conducted via Zoom, over defense objection. The Second District abided by its prior decision in this case and still concluded that "proceeding via Zoom improperly impacted T.H.'s constitutional right to confront witnesses under due process of law where the trial court did not allow T.H. a hearing on his objection and without making a case-specific finding of necessity to limit confrontation rights."

The adjudicatory hearing in this case was held on October 30, 2020, and all parties appeared via Zoom. The Second District's opinion contains a timeline related to developments based on Covid: After six months, public-health restriction had been easing; the 13th Judicial Circuit transitioned to "Phase 2"; jury trials resumed on October 19, 2020; courtrooms were not configured for social distancing; the "court had been encouraged to employ technology and avoid unnecessarily bringing people into the courthouse."

While juveniles facing delinquency prosecution do not have all of the legal rights as adults in criminal proceedings, "certain basic procedural safeguards found in criminal proceedings and afforded to a child in a juvenile proceeding, including the right to confront witnesses, are essential to due process and fair treatment and therefore necessary to satisfy the requirements of a fundamentally fair proceeding." Juvenile proceedings are not criminal proceedings, and the Sixth Amendment's Confrontation Clause applies only to criminal prosecution; the confrontation right addressed in this case was the right of confrontation as part of the Due Process Clause. While the right of confrontation may, at times, be limited, a judicial finding of necessity must be case-specific.

The State carried the burden of raising a case specific reason to support the abrogation of the preference for "physical face-to-face confrontation." A "necessity claimed by public policy cannot be de minimus." A court finding such a necessity must first "hear evidence." Such an inquiry must consider "whether the use of the video system is necessary to protect the welfare of those impacted by holding the adjudicatory hearing at its indicated location." No such hearing was held in this case, and, as a result, there was no evidentiary basis demonstrating the necessity.

One judge dissented, and would have concluded that because the confrontation right applies only in criminal proceedings, "the trial court here was permitted to make a categorical finding that necessity demanded that juveniles only be permitted to confront witnesses against them remotely through two-way audio-visual technology."

Bright v. State, 2D21-2172 (Nov. 4, 2022)

The Second District reversed an order revoking probation. Three of the alleged violations were upheld on appeal: failing to report the receipt of a traffic citation; leaving Lee County without the probation officer's approval; and failing to turn in a driving log for one month. The evidence did not support the fourth violation found by the trial court – i.e., the failure to pay court costs and electronic monitoring payments, with an arrearage exceeding $6,000. The payment schedule had been created by the probation officer, and the Second District previously held that the failure to abide by a probation officer's schedule is not sufficient to support a violation. "Absent a court-ordered schedule or time frame, Bright could not have violated his probation by failing to make payments so long as sufficient time remained on probation for him to do so."

Although the three violations that remained would support revocation, the appellate court could not "say that it is clear from this record that the court would have revoked Bright's probation based solely on those violations." This conclusion was based on the trial court's pronouncements during earlier revocation proceedings based on similar violations. The case was therefore remanded for further proceedings in the trial court.

Menchillo v. State, 2D21-3466 (Nov. 2, 2022)

The Second District affirmed a conviction for leaving the scene of a crash involving damage to unattended property. A motion to suppress evidence was correctly denied based on the conclusion that the defendant "was not in custody when he made incriminating statements to law enforcement officers."

The defendant's vehicle veered off the road and crashed into a fence. After a tow truck arrived, the defendant left his vehicle and proceeded home by other means. Deputies from the Sheriff's Office then arrived. A deputy called the defendant, "who reported that he had crashed into the fence due to a blown tire." The defendant then agreed to furnish a sworn statement.

Deputies went to the defendant's residence, where they were invited into his living room. He gave a four-minute sworn statement, admitting the elements of the crime with which he was later charged. The defendant was not Mirandized, because the deputies believed that "they were conducting a civil investigation to complete the civil crash report." The defendant testified that he thought he was under arrest when the deputies arrived.

In concluding that the defendant was not in custody and that warnings were therefore not required, the Court addressed the four relevant factors established by prior decisions. First, as to the manner in which the defendant was summoned for questioning, this favored the State, as the defendant agreed by phone to give the sworn statement and the defendant invited the deputies inside. Second, with respect to the purpose, place and manner of the interrogation, one deputy thought he was there to complete a civil traffic crash report and the in-person encounter was brief. There were no restraints on the defendant's movement and there were no "confrontational or intimidating questions posed" by the deputy. The defendant's feeling of apprehension did not transform the interrogation into one that was custodial.

The third factor, the extent to which the suspect was confronted with evidence of guilt, again favored the State, as the defendant had already admitted to the offense in the original telephone call, and there was little new information added in the sworn statement. Finally, the fact that the defendant was not informed that he was free to leave did not mandate a different conclusion. Under the facts of this case, "a reasonable person in Mr. Menchillo's position would not have considered himself in custody, notwithstanding the officers' failure to advise him that he was free to leave."

J.K. v. State, 2D22-132 (Nov. 2, 2022)
T.D.W. v. State, 2D22-361 (Nov. 2, 2022)

An oral revocation of probation must be accompanied by a written order setting forth the conditions of probation that were violated.

Third District Court of Appeal

Villatoro v. State, 3D21-0834 (Nov. 2, 2022)

The denial of a Rule 3.850 motion after an evidentiary hearing was reversed for further proceedings. When a Rule 3.850 motion is denied after an evidentiary

hearing, the trial court must "determine the issues, and make findings of fact and conclusions of law with respect thereto." The trial court in this case failed to make the requisite findings of fact and conclusions of law.

Vega v. State, 3D22-1320 (Nov. 2, 2022)

Vega sought a belated appeal by a petition in the appellate court from a trial court order "finding no probable cause to release Vega from his involuntary civil commitment under the Jimmy Ryce Act." The commitment proceedings were civil in nature and Vega was therefore not entitled to relief under appellate rule 9.141(c), which provides for belated appeals in certain instances.

Vega was granted leave to file a habeas corpus petition in the trial court seeking the same relief. That was also needed because the petition contained factual allegations about whether Vega timely instructed his attorney to file an appeal, and the trial court would have to resolve those factual issues.

Fourth District Court of Appeal

State v. Darter, 4D22-308 (Nov. 2, 2022)

The trial court erred in granting a motion to suppress evidence. Darter was charged with possessing child pornography images. The defendant argued "that although detectives had obtained a court-approved search warrant before finding the images on his cell phone, the detectives – two days earlier – had unlawfully seized his cell phone from his grasp without a warrant and allegedly without probable cause or exigent circumstances, thereby tainting the detectives' later court-approved search of his cell phone."

The events leading up to the seizure of the cell phone included the preliminary investigation, which had been based on a cyber-tip report that Jeff Darter had uploaded child pornography from a KIK account, which is a social media chatting platform. Detectives then interviewed the defendant at his place of employment, and after that 14-minute interview, they spoke to a supervisor and obtained the supervisor's consent to search the defendant's work computer. While this was going on, the defendant was observed "shaking," and "frantically swiping and pressing" the cell phone screen. Suspecting that the defendant was deleting evidence, after the defendant refused to comply with directions to turn the phone over, a struggle ensued, during which the detectives obtained the phone. A warrant was then obtained to search the phone's contents. The affidavit in support of the warrant

referenced adult pornography found on the work computer, self-pornographic images taken at the work station, and one pornographic image as to which the defectives could not determine if the person in the image was a teenage child or an adult.

The trial court's analysis of probable cause preceding the seizure of the phone had been erroneous: "Rather than focusing on the *probability* of the lead detective's belief that the defendant was frantically deleting evidence from his cell phone, the circuit court inadvertently focused on the lead detective's inability to prove the *certainty* of her belief. . . . The circuit court's focus on *certainty* rather than *probability* ran counter to the Supreme Court's process for determining probable cause, especially given the lead detective's specialized training and experience in cyber-pornography crimes against children."

Exigent circumstances existed to support the seizure of the phone without a warrant. This included the lead detective's belief, based on experience, "that the defendant might be destroying incriminating evidence on his cell phone before a search warrant could be secured." The defendant had just been confronted with evidence against him and he had been warned that the detectives were going to talk to his wife and was told that he was not on their radar. The defendant had also been ordered by his supervisor away from his desk while the detectives searched his work computer, and the defendant was observed to be shaking a frantically swiping the screen of the phone.

J.T.J. v. State, 4D21-2735 (Nov. 2, 2022)

The Fourth District concluded that two of three grounds that the trial court found to be violations of probation were not supported by sufficient evidence.

For one of these alleged violations, the State attempted to prove the existence of unexcused absences from school of five specific dates, and the State relied upon information contained in school records, which were presented under the business records hearsay exception. That exception, however, requires that the party offering the evidence provide the other party sufficient advance notice of the reliance on the records so that there is a fair opportunity to challenge the admissibility of the evidence. The State did not comply with the statutory notice requirement of section 90.803(6)(c). And, while those records would still be admissible as hearsay in a probation revocation proceeding, there was no corroborating non-hearsay evidence to support the hearsay, and a revocation of probation requires that there be some non-hearsay evidence to support the revocation.

The trial court also found the existence of a curfew violation for a specific date, but the State, during the hearing, withdrew that allegation, and the trial court could not revoke probation based on conduct not alleged in the charging document. As to the date of a second alleged curfew violation, there was no evidence presented, and the VOP petition suggested that a law enforcement officer was the source of that information, but that officer did not testify. Another detective testified to having arrested the defendant late at night, but that detective could not recall the date of the arrest.

While there was one remaining violation that was supported by the evidence for a curfew violation, it was not apparent from the record that the trial court would have revoked probation based on the single violation. The case was remanded for further proceedings.

Herbert v. State, 4D22-819 (Nov. 2, 2022)

A trial court's award of credit for jail time is limited to pre-sentence jail time. As to time served in jail after sentencing, but prior to transfer to state prison, the Department of Corrections has the duty of calculating and awarding that credit.

Fifth District Court of Appeal

State v. Sawyer, 5D21-2422 (Nov. 4, 2022)

The downward departure sentence imposed by the trial court was reversed because it was not supported by competent, substantial evidence.

The trial court imposed a sentence of probation based on the defendant's renal failure and need for dialysis treatment. Medical documentation had been submitted to the court, but it was not signed by treating physicians, and there was no sworn testimony. Additionally, these documents, while appearing to support the existence of chronic renal failure and other illnesses, "do not address the specialized nature of dialysis as a treatment, or whether Appellee is amenable to such treatment. Third, a defendant's testimony as to his medical condition, on its own, has been found to be insufficient to support a downward departure under section 921.0026(2)(d). . . . Finally, an attorney's representations are insufficient to support a downward departure."

As the sentence had been imposed after a plea to the court, on remand, the defendant was "given an opportunity to withdraw his plea if he wishes to do so." Otherwise, the court would conduct a new sentencing hearing.

State v. Torres, 5D22-21 (Nov. 4, 2022)

The Court issued a revised opinion on rehearing to correct a ministerial error in the prior opinion. The Court's prior opinion was not changed substantively, and is discussed in the September 12, 2022 issue of the Case Law Update.

Of further note, the Fifth District, in both the original and corrected opinions, certified to the Supreme Court of Florida a question of great public importance, and on January 31, 2023, the Supreme Court declined to exercise jurisdiction. The certified question was:

> DOES A MUNICIPAL LAW ENFORCEMENT OFFICER WHO HAS LAWFULLY ARRESTED A SUSPECT FOR COMMITTING THE OFFENSE OF DUI WITHIN THE OFFICER'S TERRITORIAL JURISDICTION HAVE THE CONTINUED AUTHORITY OF HIS OR HER OFFICE TO REQUEST THAT THE SUSPECT SUBMIT TO BREATH TESTING UNDER FLORIDA'S IMPLIED CONSENT LAW WHEN THE REQUEST AND THE TESTING TAKE PLACE OUTSIDE OF THE CITY LIMITS OF THE OFFICER'S MUNICIPALITY?

Scott v. State, 5D22-478 (Nov. 4, 2022)

The summary denial of two grounds of a Rule 3.850 motion was reversed for further proceedings. One claim in question alleged that counsel was ineffective for "failing to argue that the attempted second-degree murder count (Count II) charged in the Indictment was improperly reclassified, without notice to him, when the jury was given a special verdict from that allowed it to find that Appellant 'did personally carry, display, use, threaten to use, or attempt to use a firearm.'" Scott argued that he was not charged with carrying, using, etc., the firearm, and the special verdict thus violated his due process rights and counsel should have objected.

The indictment charged attempted second-degree murder with a firearm, and further alleged that the defendant committed the offense "by aiding, abetting,

counseling, or otherwise procuring other individuals driven to the scene by [Appellant] to discharge a firearm." A "jury's finding is not sufficient to support reclassification [based on possession or use of a firearm] in the absence of proper language in the indictment."

The other claim at issue was that counsel was ineffective "for misadvising about [the] right to testify and not preparing [the defendant] to testify." He alleged that counsel told him that if he testified, his criminal history would be presented, and he understood that to mean that the jury would learn the substance of the prior offenses, and counsel never corrected that belief. The motion alleged that he would have testified that he was not present at the time of the shooting and that he informed counsel of this.