

IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC2023-1749
LOWER COURT CASE NO.: 4D2022-2399

JEROME SAFFOLD,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

PETITIONER'S INITIAL BRIEF ON JURISDICTION

On Discretionary Review From a Decision
of the Fourth District Court of Appeal

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STATEMENT OF THE ISSUES

The Fourth District Court of Appeal held that Petitioner could not move to withdraw his plea under Florida Rule of Criminal Procedure 3.170(f) prior to a resentencing hearing, where his original sentence was reversed on appeal. See *Saffold v. State*, 4D2022-2399, 2023 WL 8246165 (Fla. 4th DCA Nov. 29, 2023). The Fourth District held that a rule 3.170(f) motion to withdraw plea may only be filed prior to the original sentencing hearing and not upon resentencing.

This Court should accept jurisdiction to review the instant case because the Fourth District's opinion certified conflict with *Scott v. State*, 331 So. 3d 297 (Fla. 2d DCA 2021), a Second District Court of Appeal case which held that a defendant may move to withdraw a plea prior to a resentencing hearing based on the plain language of rule 3.170(f) and analogous caselaw.

STATEMENT OF THE CASE AND FACTS

All facts are found within the four corners of the opinion on review, *Saffold v. State*, 4D2022-2399, 2023 WL 8246165 (Fla. 4th DCA Nov. 29, 2023), which has been provided as an Appendix to this brief. Petitioner will refer to the slip opinion as “Op.” followed by the corresponding page of the opinion.

Trial Court Proceedings

Petitioner entered an open plea to five counts of sexual battery while armed, one count of kidnapping, and one count of aggravated battery with a deadly weapon. (Op. 1). Before sentencing, Petitioner was informed by his attorney and the trial court that he was facing a 25-year minimum mandatory. (Op. 1). However, the State noted in a filing that the actual minimum mandatory was 50 years in prison pursuant to the Dangerous Sexual Felony Offender Act. (Op. 2). Since this was contrary to what Petitioner was told, the State agreed to set the minimum mandatory to 25 years. (Op. 2).

At sentencing, Petitioner moved for a downward departure. (Op. 2). The trial court denied the motion and sentenced Petitioner to life in prison with a 25-year minimum mandatory on Count I and concurrent sentences on the remaining counts. (Op. 2).

After taking an appeal, the Fourth District Court of Appeal reversed due to various errors during sentencing. *Saffold v. State*, 310 So. 3d 55 (Fla. 4th DCA 2021) (*Saffold I*). On remand and prior to resentencing, Petitioner moved to withdraw his plea pursuant to Florida Rule of Criminal Procedure 3.170(f). (Op. 2). The trial court denied the motion and resentenced Petitioner to the same sentence he received originally with slight modifications relating to the Fourth District’s mandate. (Op. 2).

The Fourth District Court of Appeal’s Decision

On his second appeal, Petitioner argued that he was entitled to withdraw his plea prior to resentencing pursuant to *Scott v. State*, 331 So. 3d 297 (Fla. 2d DCA 2021). (Op. 3). In *Scott*, the Second District Court of Appeal addressed whether a defendant may file a presentence motion to withdraw plea under rule 3.170(f), if it was filed after a defendant’s “original sentence has been vacated but before a new one has been imposed.” *Id.* at 300.

The Second District held that the plain language of rule 3.170(f) states that a defendant may move to withdraw a plea at any time before “a sentence,” which the Second District interpreted to mean any sentencing proceeding, “whether that be the initial sentencing or a subsequent resentencing.” *Id.* at 300-01.

Moreover, courts have held that defendants may file a motion to withdraw plea under Florida Rule of Criminal Procedure 3.170(l)—the analogous, postsentencing version of the motion—within 30 days after resentencing. *Id.* at 301. Therefore, since the “sentence” in rule 3.170(l) encompasses a new sentence imposed after resentencing, the Second District saw “no reason why such a new sentence would not also qualify as ‘a sentence’ under rule 3.170(f).” *Id.*

The Fourth District affirmed Petitioner’s sentence in his second appeal. *Saffold v. State*, 4D2022-2399, 2023 WL 8246165 (Fla. 4th DCA Nov. 29, 2023) (*Saffold II*). The Fourth District disagreed with the analysis in *Scott*, finding that if “a” were to mean “any,” then the rule would have said “any” sentence. (Op. 4).

Moreover, as it relates to *Scott*’s comparison of rules 3.170(f) and 3.170(l), the Fourth District noted that rule 3.170(l) relief is available to a defendant on resentencing because the burden is more stringent. (Op. 4). As such, a defendant at a resentencing “already knows the sentence” and would be in the same position as a defendant who moved to withdraw a plea after the original sentence. (Op. 4). The Fourth District determined:

Thus, if a motion to withdraw under rule 3.170(f) must be made *before* a sentence, then the only time that can occur is *before* the original sentence. All other sentences are *after* the original sentence.

(Op. 5).

Finally, the Fourth District held that permitting a motion to withdraw a plea upon resentencing “conflicts with the principle of finality,” particularly where a defendant “did not move to withdraw the plea prior to his original sentence.” (Op. 5-6). Therefore, the Fourth District concluded that Petitioner could not move to withdraw his plea pursuant to rule 3.170(f) upon court-ordered resentencing. (Op. 6).

The Fourth District affirmed and certified conflict with *Scott*. (Op. 6-7). Petitioner timely invoked this Court’s discretionary jurisdiction.

ARGUMENT

This Court has jurisdiction to review Petitioner's cause because the Fourth District Court of Appeal's opinion certified conflict with a decision from the Second District Court of Appeal

Basis of Jurisdiction

This Court has jurisdiction to review this case under Article V section 3(b)(4) of the Florida Constitution because the Fourth District Court of Appeal's opinion certified conflict with the Second District Court of Appeal's decision in *Scott v. State*, 331 So. 3d 297 (Fla. 2d DCA 2021). See Art. V, § 3(b)(4), Fla. Const. (this Court “[m]ay review any decision of a district court of appeal ... that is certified by it to be in direct conflict with a decision of another district court of appeal.”).

Certified Conflict

Florida Rule of Criminal Procedure 3.170 governs pleas in criminal cases. The rule permits defendants to withdraw pleas under two different tracks, depending on whether the motion was made presentence or postsentence. Rule 3.170(f) allows a defendant to withdraw a plea at any time before a sentence is imposed. On the other hand, rule 3.170(l) allows a defendant to withdraw a plea up to 30 days after the rendition of the sentence.

A notable difference between the two tracks is that the presentence standard may be more liberally granted, allowing withdrawal of the plea at the trial court's discretion or upon a showing of "good cause." See Fla. R. Crim. P. 3.170(f). The postsentence standard is stricter, allowing withdrawal of the plea only upon grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e), or as otherwise provided by law. See Fla. R. Crim. P. 3.170(l).

An issue arose in cases where a defendant's sentence was reversed on appeal or vacated following a postconviction motion. The question presented was whether a defendant may file a presentence motion to withdraw plea under rule 3.170(f) where a defendant's original sentence has been vacated or reversed but before a new sentence has been imposed.

The Second District in *Scott*, 331 So. 3d 297, addressed this situation. There, the defendant argued that because the "postconviction court set aside his original sentences and ordered that he be sentenced anew, he was returned to a presentence position and was allowed to file a motion under subdivision (f)." *Id.* at 300. The Second District agreed, holding that under the plain language of the rule, a defendant may file a rule 3.170(f) motion to withdraw plea at any time before "a sentence." *Id.*

The use of the nonexclusive “a” suggests that it applies to any sentencing proceeding, “whether that be the initial sentencing or a subsequent resentencing.” *Id.* at 301.

This interpretation also aligned with rule 3.170(l) and its associated caselaw. *Id.* (citing *Chipman v. State*, 285 So. 3d 1005, 1006 (Fla. 2d DCA 2019); *Passino v. State*, 174 So. 3d 1055, 1056–57 (Fla. 4th DCA 2015)). Such cases have held that a defendant may file a postsentencing motion to withdraw plea, even after resentencing:

[C]ourts have held that the completion of resentencing starts a new thirty-day clock for a postsentencing motion under rule 3.170(l) ... The import of that conclusion is that if the imposition of a new sentence following resentencing affords a defendant the same plea-withdrawal rights that he possessed following the rendition of his original sentence, the revocation of a defendant’s original sentence should likewise grant the defendant the same presentencing plea-withdrawal rights he enjoyed before.

Id.

The Fourth District disagreed with *Scott* and certified conflict. *Saffold v. State*, 4D2022-2399, 2023 WL 8246165 (Fla. 4th DCA Nov. 29, 2023). The Fourth District interpreted rule 3.170(f) and determined that the term “a sentence” did not apply to “any sentencing proceeding,” which was contrary to the Second District’s interpretation and, at best, “ambiguous as to how it should be construed in these circumstances.” *Id.* *2. The Fourth District

held that while a resentencing “is treated as a new sentencing proceeding,” *State v. Collins*, 985 So. 2d 985, 989 (Fla. 2008), it did not “negate the *fact* that the defendant has already had a sentence imposed.” *Id.* *3. As such, the Fourth District determined that “a sentence” under rule 3.170(f) likely refers to the “original sentence.” *Id.*

Additionally, the Fourth District found that analogizing the postsentencing standard of rule 3.170(l) to the presentencing standard of rule 3.170(f) was inappropriate because “the two sections of the rule differ in the application of the burden of proof in withdrawing the plea.” *Id.* at *2.

The Fourth District also noted the different purposes of the two sections:

The reason for the liberal standard before sentencing is that the law favors a trial on the merits. *See Moraes v. State*, 967 So. 2d 1100, 1101 (Fla. 4th DCA 2007).

...

To permit the defendant to withdraw a plea under the more liberal standard of rule 3.170(f) after a reversal and remand for resentencing allows the defendant the right to have a “swift change of heart,” knowing what sentence may likely be imposed. This is the reason that rule 3.170(l) provides a much more limited right to withdraw the sentence.

Id. at *3.

Finally, the Fourth District held that *Scott’s* interpretation of rule 3.170(f) “conflicts with the principle of finality.” *Id.* The Fourth District cited to *Campbell v. State*, 125 So. 3d 733 (Fla. 2013), which interpreted Florida

Rule of Criminal Procedure 3.172(g). In *Campbell*, this Court noted that while the rule allows the withdrawal of a plea any time prior to acceptance by the trial court, a “literal reading of the rule would lead to an absurd result and would be contrary to the interests of finality in judicial proceedings.” *Id.*

Based on the above reasons, the Fourth District held that Petitioner “was not entitled to bring a motion to withdraw a plea pursuant to rule 3.170(f) upon court-ordered resentencing” and certified conflict with *Scott*. *Id.* at *4. Because the Fourth District expressly disagreed with the Second District’s holding in *Scott*, there are two divergent procedural rules for moving to withdraw a plea upon resentencing in Florida. Therefore, Petitioner requests that this Court accept review of his case and resolve this certified conflict.

CONCLUSION

Based on the foregoing arguments and authorities, Petitioner requests this Court exercise its discretion and accept jurisdiction of this cause for review.

CERTIFICATE OF SERVICE

I certify that this brief was filed with the Court and a copy was served to Assistant Attorney General Melynda L. Melear, 1515 N. Flagler Drive, West Palm Beach, Florida 33401, by email at CrimAppWPB@MyFloridaLegal.com this 19th day of December, 2023.

/s/ TIMOTHY WANG
TIMOTHY WANG

CERTIFICATE OF COMPLIANCE

I certify this brief is submitted in Arial 14-point font in compliance with Florida Appellate Rule 9.210(a)(2) and that the word count is 2,500 or less exclusive of the caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block.

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