Filing # 203880999 E-Filed 08/01/2024 04:34:25 PM

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

JEROMEE SAFFOLD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

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

CAREY HAUGHWOUT
Public Defender
421 Third Street
West Palm Beach, Florida 33401
(561) 355-7600

Timothy Wang
Assistant Public Defender
Florida Bar No. 112269
twang@pd15.state.fl.us
appeals@pd15.org

Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

Statutes

ARGUMENT

The pre-sentence standard to withdraw a plea under Florida Rule of Criminal Procedure 3.170(f) should apply to defendants at a resentencing hearing

Whether a motion to withdraw plea under rule 3.170(f) should be considered prior to resentencing

1) Interpretation of rule 3.170(f)

The State argues that the dictionary definition of "sentence" is different from "resentence." (AB. 7). The "sentence" is a judgment "formally pronounced by a court or judge in a criminal proceeding and specifying the punishment to be inflicted upon the convict." (AB. 7). Whereas the verb "resentence" is: "to impose a new or revisited sentence or punishment on (someone who has already been sentenced for a crime)." (AB. 7).

The State similarly cites to Black's Law Dictionary for the definition of "resentencing": "The act or an instance of imposing a new or revised criminal sentence." (AB. 8); (*Resentencing*, Black's Law Dictionary (12th ed. 2024)). The State argues that since "resentence" is defined differently than "sentence," "sentence" in rule 3.170(f) "does not clearly include resentencing." (AB. 8).

The State's argument is flawed. First, the definitions of "resentencing" or "resentence" simply suggest that it is a revised sentence. At its core, a "resentence" is still a "sentence" even under the State's logic.

Second, the State is relying on dictionary terms when the law has already provided definitions. "One of the most fundamental tenets of statutory construction requires that we give statutory language its plain and ordinary meaning, unless the words are defined in the statute or by the clear intent of the legislature." *State v. Del Castillo*, 890 So. 2d 376, 379 (Fla. 3d DCA 2004) (citation omitted).

"Sentence" is defined in Florida Rule of Criminal Procedure 3.700. While the rules do not define "resentencing," caselaw and the dictionary definition says it is just a new sentencing. Thus, the State's argument must fail.

The State next argues that the article "a" suggests that "a sentence" does not include resentencing. (AB. 8-9). The State agrees that "a" does "not necessarily have any precise meaning in the rule." (AB. 9). However, the State argues that section 909.13, Florida Statutes (which was repealed in 1970) was essentially the same as rule 3.170(f), except that section 909.13 did not contain "a": "The court may in its discretion at any time before sentence permit a plea of guilty to be withdrawn…" (AB. 9); *Riddle v. State*, 212 So. 2d 122, 123 (Fla. 2d DCA 1968). The State suggests that the "inclusion of the article 'a' in rule 3.170(f) limited the scope of 'sentence' to a single event." (AB. 9).

The State's logic ignores why the article "a" needed to be included: because defendants can have multiple counts and thus multiple sentences. Therefore, the rule suggests that a motion to withdraw plea is count-specific or case-specific, and does not necessarily allow for withdrawal of all pleas from a single sentencing hearing.

This is also why the article "any" was not included: because "any" implies that a defendant may move to withdraw a plea from a separate count. *Cf. State v. Grappin*, 427 So. 2d 760, 763 (Fla. 2d DCA 1983), *approved*, 450 So. 2d 480 (Fla. 1984) ("The article 'any,' unlike the article 'a,' does not necessarily exclude any part of plural activity.").

For example, say a defendant enters a plea in two separate counts and is first sentenced on one count, but not yet sentenced on the second. If rule 3.170(f) allowed withdrawal of a plea before "any" sentence, then a defendant could theoretically withdraw his plea on both counts because he was not yet sentenced on the second count, even if the motion was filed after he was sentenced on the first count. Thus the article "any" would allow far greater flexibility than the rule likely would've intended. Thus the State's argument regarding "any" must also fail. (AB. 9-10).

2) <u>Different standards under rule 3.170</u>

The State argues that because Florida Rule of Criminal Procedure 3.170(l) uses the article "the," which is a "definitive article that gives meaning to a provision," "the sentence" refers to the original sentence. (AB. 11).

The State ignores caselaw holding that rule 3.170(l) is not limited to the original sentence. (IB. 26). The State attempts to distinguish *Chipman v. State*, 285 So. 3d 1005 (Fla. 2d DCA 2019), and *Passino v. State*, 174 So. 3d 1055 (Fla. 4th DCA 2015). For *Chipman*, the State argues that the case simply stood for the proposition that the "trial court erred in dismissing the motion [under rule 3.170(l)] for lack of jurisdiction." (AB. 16). The State ignores that *Chipman* also held that such motions are timely filed after resentencing. *Chipman*, 285 So. 3d at 1006. The fact that procedural jurisdiction was mentioned is not a distinction relevant to this issue and the State fails to explain why it would matter.

As for *Passino*, the State agrees that the case stands for the proposition that a rule 3.170(l) motion may be heard after resentencing. (AB. 16). However, the State argues that *Passino* failed to analyze "how it arrived at this conclusion or on the meaning of 'the sentence' under the rule." (AB. 16). Contrary to the State's claims, *Passino* clearly explained its rationale:

> First, defendant's motion to withdraw plea, made within thirty days of the imposition of sentence at the resentencing, was timely under Florida Rule of Criminal Procedure 3.170(l), which affords a defendant thirty days from rendition of sentence to file a motion to withdraw plea. *See Fox v. State*, 166 So.3d 894, 896 (Fla. 4th DCA 2015) ("Because resentencing is a new proceeding, the sentencing process starts afresh … [R]esentencing constitutes, for all intents and purposes, the 'rendition' of a new sentence.") (citation omitted).

Passino, 174 So. 3d at 1056-57.

The State contends that a "resentencing after collateral proceedings does not 'restart the clock' to raise new claims in a 3.850 motion about the original trial proceedings." (AB. 13) (citing *Humphrey v. State*, 329 So. 3d 160 (Fla. 4th DCA 2021)). The State misconstrues *Humphrey*. There, after the defendant's first 3.850 motion was denied and affirmed on appeal, the defendant filed a rule 3.800(a) motion to correct his sentence on one count. *Id*. at 162. After he was resentenced on the one count, he filed a successive 3.850 motion raising issues related to the trial. *Id*. The Fourth District affirmed the dismissal of his second motion, noting that he did not explain "why he could not have raised his claims in his first rule 3.850 motion." *Id*. (comparing *McCallum v. State*, 842 So. 2d 158, 158-59 (Fla. 4th DCA 2003)) (holding rule 3.850 motion was timely filed within two years of resentencing because the claim "could not have been ascertained prior to the time of resentencing.").

The State questions why a defendant should be allowed to withdraw a plea "simply because resentencing was ordered" and suggests that defendants at resentencing would "restate claims already rejected in a motion to withdraw plea prior to the original sentencing," allowing for "successive claims." (AB. 13-14).

This concern lacks merit. Principles such as *res judicata*, collateral estoppel, and the "law of the case" doctrine prevents unnecessary relitigation. *See State v. McBride*, 848 So. 2d 287, 289 (Fla. 2003) (discussing the three principles). The State erroneously cites to *Denson v. State*, 775 So. 2d 288, 290 (Fla. 2000), for support because it addressed *res judicata*, which deals with claims that have already been decided on the merits. (AB. 14).

In the present case, Petitioner did not file multiple motions to withdraw plea. Regardless, if a motion to withdraw plea lacked good cause the first time, a second motion would still lack good cause and be denied, regardless of how many times it is litigated. The only issue before this Court is a purely procedural question. There is no reason to believe that this issue would allow defendants to relitigate motions to withdraw plea that were denied on substantive grounds.

3) Out-of-state cases

The State erroneously relies on *Grimmett v. State*, 152 P. 3d 306 (Utah 2007), a Utah Supreme Court case which addressed whether a defendant at a "nunc pro tunc resentencing" was allowed to withdraw his plea under the more favorable presentence standard.

In *Grimmett*, the defendant was ordered to be resentenced "nunc pro tunc" pursuant to a case called *State v. Johnson*, 635 P. 2d 36 (Utah 1981). *Id*. at 308. However, the *Grimmett* opinion clearly noted that "the *Johnson* resentencing remedy is limited in nature and purpose." *Id*. at 309. The *Johnson* remedy (which has since been replaced with a different remedy) was only intended to allow defendants who were "prevented from bringing timely appeals through no fault of their own" to restart the "appeal clock" and provide "an opportunity to bring direct appeals of their convictions." *Id*. at 310. Due to the limited scope of *Johnson*, the Utah Supreme Court held that the defendant's resentencing order "did not reopen the filing window" for a motion to withdraw plea under Utah's Code of Criminal Procedure. *Id*. at 311.

In the present case, Petitioner was ordered to be resentenced. *Saffold v. State,* 310 So. 3d 55 (Fla. 4th DCA 2021) (*Saffold I*). Pursuant to Florida caselaw, resentencing must proceed "de novo on all issues bearing on the proper sentence." *State v. Collins*, 985 So. 2d 985, 989 (Fla. 2008)

(citations omitted). A de novo resentencing in Florida is not limited in scope like Utah's nunc pro tunc resentencing. Rather, at a de novo resentencing, the trial court "must extend to the defendant the 'full panoply' of existing procedural protections, [] including any new constitutional protections that have been recognized since the defendant's original sentencing." *Galindez v. State*, 955 So. 2d 517, 525 (Fla. 2007) (Cantero, J., specially concurring) (citation omitted).

The State also erroneously relies on *State v. Frechette*, 687 A.2d 628, 629 (Me. 1996). (AB. 14). There, the Supreme Judicial Court of Maine held that "[t]he fact that we reviewed [the defendant's] sentences and remanded for an adjustment does not place defendant in the same position he occupied 'before sentence [was] imposed.'" *Id*. The State's reliance here is misplaced for the same reasons addressed above. A de novo resentencing in Florida places a defendant in the same position before sentence was imposed because resentencing should "proceed in every respect as an entirely new proceeding." *Wike v. State*, 698 So. 2d 817, 821 (Fla. 1997) (citing cases); *cf.* Fla. R. Crim. P. 3.640.

The only relevant out-of-state case is *Com. v. Muntz*, 428 Pa. Super. 99 (1993). (AB. 25). There, the defendant's sentence was vacated on appeal and remanded for resentencing. *Id*. at 101. Prior to resentencing,

the defendant attempted to withdraw his plea, which was denied. *Id*. The Pennsylvania Superior Court determined that the defendant was "testing the sentencing process" and should be limited to the post-sentencing standard. *Id*. at 105.

Pennsylvania holds that "[w]hen a sentence is vacated and the case is remanded to the sentencing court for resentencing, the sentencing judge should start afresh." *Com. v. Jones*, 433 Pa. Super. 266, 277 (1994). However, Pennsylvania does not have the same robust caselaw regarding de novo resentencing that Florida has, such as affording a defendant the "full panoply" of existing procedural and constitutional protections from the original sentencing. *Galindez*, 955 So. 2d at 525. As such, *Muntz*'s result was more in line with other jurisdictions holding that a resentencing would not necessarily place a defendant in the same position as the original sentencing hearing.

Nevertheless, Pennsylvania appears to be in the minority of jurisdictions regarding this issue. In other jurisdictions with a similar concept to Florida's de novo resentencing remedy, those courts have held that defendants may move to withdraw plea—even under the more favorable presentence standard—upon resentencing. For example:

> *Franks v. State*, 748 S.E.2d 291, 292 (Ga. Ct. App. 2013): "Since a void sentence is the same as no sentence at all, the

defendant stands in the position as if he had pled guilty and not been sentenced, and so may withdraw his guilty plea as of right before resentencing, even following the expiration of the term of court in which the void sentence was pronounced."

State v. McFarland, 941 P. 2d 330, 333–34 (Idaho Ct. App. 1997): "Generally, where a judgment has been vacated, it is a nullity and the effect is as if it had never been rendered at all. [] Consequently, on remand, McFarland's case proceeded as if the original sentences had never been entered. Therefore, under I.C.R. 33(c), because sentence had not been imposed, the district court should have utilized the less rigorous standard of just reason in determining whether to grant McFarland's request to withdraw his *Alford* pleas."

People v. Hodge, 205 P. 3d 481, 483 (Colo. App. 2008): "[W]e conclude that, contrary to the Attorney General's argument on appeal, the Crim. P. 32(d) motion is timely because it was filed before resentencing, after the sentence had been vacated in *Hodge II*."

State v. Manke, 602 N.W.2d 139, 143 (Wis. Ct. App. 1999): "Having concluded that the sentence was vacated, we agree with the court's application of the presentencing standard—a fair and just reason—to Manke's plea withdrawal motion."

State v. Boswell, 2009-Ohio-1577, ¶ 9, 121 Ohio St. 3d 575, 578, *overruled in part by State v. Harper*, 2020-Ohio-2913, ¶ 9, 160 Ohio St. 3d 480: "A motion to withdraw a plea of guilty or no contest made by a defendant who has been given a void sentence must therefore be considered as a presentence motion under Crim.R. 32.1."

Cf. State v. Fritz, 299 Kan. 153, 155 (2014): "The State essentially advocates penalizing defendants who successfully appeal from their sentences by preventing them from filing motions to withdraw their guilty pleas after they win their appeals … We therefore decline to adopt the State's theory that a defendant may not move to withdraw a guilty plea after a case is remanded from the appellate courts for resentencing."

4) The State's discussion of *Griffin*

The State argues that *Griffin v. State*, 114 So. 3d 890 (Fla. 2013), "did not expressly or implicitly indicate that a defendant may file a motion to withdraw plea prior to resentencing under rule 3.170(f)." (AB. 15). The State argues that this Court merely distinguished *Johnson v. State*, 834 So. 2d 384 (Fla. 2d DCA 2003), from the circumstances in *Griffin*. (AB. 15). The State contends that this Court "did not consider the analysis in *Johnson* or address the merits of the *Johnson* court's conclusion." (AB. 15).

This Court expressly addressed *Johnson* and the propriety of using rule 3.170(f) at resentencing. *Griffin*, 114 So. 3d at 898. Moreover, this Court determined that the defendant in *Johnson* was entitled to withdraw his plea under rule 3.170(f) because he was being resentenced, unlike the defendant in *Griffin*. There was no way to reach that conclusion without addressing the merits of why the defendant in *Johnson* was allowed to withdraw his plea.

The State's discussion of pleas and finality

The State argues that because rule 3.170 was placed in the rules "well before the sections on judgments and sentences," the language in 3.170 "anticipates the original sentencing upon adjudication." (AB. 17). The

State cites to no authority for the proposition that the order of the rules dictates the meaning contained in the rule itself.

As for *Campbell v. State*, 125 So. 3d 733 (Fla. 2013), the State questions why a defendant should be allowed to withdraw his plea when a case is reversed for resentencing. (AB. 21-22). The State notes that according to *Campbell*, there exists a "need to end litigation." (AB. 22). The State fails to address the points Petitioner argues in his Initial Brief. (AB. 18-20); (IB. 32-34).

However, the State notes that it would lead to "absurd results if the State or the tribunal sough to withdraw after the defendant had already partially performed his or her duties under a plea agreement." (AB. 23). The State fails to acknowledge that, unlike in *Campbell*, Petitioner did not receive a benefit from a plea that he partially performed. Nor did the State and trial court have to perform a duty under the plea agreement. Instead, when Petitioner's sentence was vacated and remanded for resentencing, it was as if Petitioner had not been sentenced. Because Petitioner was placed in the same position as before the sentence, there was no bargain or duty that could be reneged or altered.

The State next suggests that double jeopardy principles may prevent withdrawal of a plea. (AB. 20-21). However, the State's own citation to

Smalls v. State, 144 So. 3d 656, 657 (Fla. 2d DCA 2014), discards this argument by noting that "the trial court may not set aside that plea *without legal cause*." (emphasis in original). Then, in a footnote, *Smalls* cites to rule 3.170(f) and (l) as examples of legal cause. *Id*. at n.1.

The State also makes the point that an issue not raised below is often waived on appeal. (AB. 22-23). The State suggests that if a defendant doesn't raise a motion to withdraw plea during the original sentencing hearing, it should not be allowed at resentencing under waiver principles. (AB. 23). The State, again, fails to acknowledge that a de novo resentencing hearing starts the sentencing proceedings all over. Which means that any procedural right that existed prior to sentencing is still available to a defendant. Moreover, the State cites to no authority suggesting that waiver principles apply to cases reversed on appeal, i.e., that issues not raised in the first hearing constitutes waiver and carries over to the new hearing. This would defeat the purpose of de novo resentencing.

The State relies on Standard 14-2.1, *Pleas of Guilty*, American Bar Association Standards for Criminal Justice (1997), for the proposition that courts should consider "whether there is any prejudice to the prosecution caused by reliance on the defendant's plea for a withdrawal prior to sentencing and on whether a motion was filed with the exercise of due

diligence for motions filed after sentencing." (AB. 24). The State argues that this Court in *Campbell* "pointed to the standard" in its opinion. (AB. 24).

The State misinterprets *Campbell*. *Campbell* discussed rule 3.170(l) and the origin of the "manifest injustice" requirement during the time when Florida did not have a procedure for withdrawing pleas after sentencing. *Campbell*, 125 So. 3d at 735-36. However, *Campbell* did not require evidence that the State was substantially prejudiced by reliance on the plea. Nor does the plain language of rule 3.170(f) say that. Moreover, the State never alleged prejudice. The mere possibility of prejudice is insufficient.

The State also relies on federal cases holding that a defendant's delay in filing a motion to withdraw plea should be reviewed with more scrutiny. (AB. 26-27). Even if true, Florida does not follow the same holding. Since the sentencing hearing is the "critical juncture in a defendant's ability to withdraw a plea," *Harrell v. State*, 894 So. 2d 935, 939 (Fla. 2005), it makes no difference how much time has passed. Florida does not treat a motion filed the day of sentencing (perhaps months or even years later) any different from one filed the day after the plea; both are timely under the plain language of the rule.

5) Even if Petitioner's motion to withdraw plea was timely, whether the trial court did not abuse its discretion in finding a lack of good cause

The State argues that Petitioner failed to show good cause in his motion. (AB. 27-28). The State argues that the trial court denied the motion because it rejected Petitioner's claims and thus the trial court's ruling should not be disturbed absent an abuse of discretion. (AB. 29).

The State's argument could not be made at this juncture. "The Florida Supreme Court is a court of limited jurisdiction, [] with authority to hear only those matters specified in Florida's Constitution." *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (cleaned up).

This Court accepted review of this case to address a very narrow procedural issue: whether a defendant can move to withdraw a plea under rule 3.170(f) at resentencing. The merits of Petitioner's claim was not the basis of the certified conflict presented to this Court. Moreover, the Fourth District never addressed the merits of Petitioner's motion; the appeal was affirmed solely on procedural grounds. It is not this Court's role to resolve all issues for the Fourth District, which could be done on remand.

Regardless, on the merits, the trial court did not deny the motion because it rejected Petitioner's testimony; the trial court denied the motion because it believed Petitioner's reasons were "not a basis to vacate a plea." (TR. 766). However, being misinformed about the potential sentence is clearly a valid basis to withdraw a plea. *See Hypes v. State*, 163 So. 3d

745, 747 (Fla. 1st DCA 2015) ("Appellant's guilty plea based upon flawed legal advice is certainly a plea entered under mistake or misapprehension.").

6) Whether Petitioner had a limited resentencing and whether he could seek to withdraw only part of his plea

The State alternatively argues that Petitioner could only seek to withdraw parts of his plea because *Saffold v. State*, 374 So. 3d 836 (Fla. 4th DCA 2023) (*Saffold II*), held that Petitioner was given resentencing on two of seven counts. (AB. 31). The State cites to the language in *Saffold I* to suggest that the resentencing instruction did not apply to all counts. (AB. 32).

The State cites to several cases where the "resentencing" instruction was separate or missing from a "reconsideration" or "reverse" instruction. (AB. 33-34); *see*, *e.g.*, *Bellamy v. State*, 199 So. 3d 480, 484 (Fla. 4th DCA 2016); *Ellis v. State*, 816 So. 2d 759, 762 (Fla. 4th DCA 2002); *Hines v. State*, 817 So. 2d 964, 965 (Fla. 2d DCA 2002).

The State's reliance on these cases is misplaced. None of these cases suggests that a defendant is not entitled to resentencing. The terms "resentencing" and "reverse sentence" mean the same thing. Even Judge Thompson's concurrence in *Shuler v. State*, 947 So. 2d 1259 (Fla. 5th DCA 2007), which the State relies on, does not stand for the proposition that the

remedy for a downward departure error should not be resentencing. The concurrence merely points out that he would have affirmed but for one of the trial court's comments. *Id*. at 1261.

The State's reliance on *Camacho v. State*, 164 So. 3d 45 (Fla. 2d DCA 2015), is similarly misplaced. (AB. 34). *Camacho* does not suggest that resentencing is not the remedy for downward departure errors. In fact, resentencing is exactly what the Second District ordered: "Accordingly, we reverse the sentences and remand for resentencing." *Id.* at 46.

The Second District only added that a new hearing may not be necessary: "We leave it to the **discretion of the trial court, after consulting with counsel**, to decide whether it should conduct a completely new sentencing hearing or whether it can rule based on the record already before it." *Id*. at 49 (emphasis added). This was simply a suggestion that the parties may waive their right to a full de novo resentencing. Nothing in the opinion suggests that the defendant in *Camacho* deserved a lesser remedy than a resentencing. A lesser remedy would lead to the problems that Petitioner listed in his Initial Brief. (IB. 42-44). *Camacho* merely implies that the parties may be satisfied with the evidentiary portion of the original sentencing and would like to proceed with a new ruling under the benefit of an appellate opinion.

Here, the parties never waived the right to a de novo resentencing. The parties and the trial court conducted a full resentencing and afforded Appellant the “full panoply” of procedural rights, except his right to withdraw his plea under rule 3.170(f). Thus the State’s argument must fail.

CONCLUSION

Based on the foregoing arguments and authorities, Petitioner requests this Court disapprove of the Fourth District's holding in this case and approve the Second District's holding in *Scott*.

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 1st day of August, 2024.

/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 4,000 or less exclusive of the caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block.

/s/ TIMOTHY WANG
TIMOTHY WANG