CASE LAW SUMMARY
WEEK OF SEPT 11-15, 2023

JUVENILE OFFENDER-LIFE SENTENCE: Two consecutive life sentences, each with the possibility of parole after twenty-five years, for murders committed by a juvenile offender 1994 do not violate the Eighth Amendment. Evolving case law regarding life sentences for juveniles outlined. Garner v. State, 2D22-866 (9/15/23)

https://2dca.flcourts.gov/content/download/879463/opinion/220866_DC05_09152023_083456_i.pdf

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-PLEA OFFER: Defendant is not entitled to post conviction relief from his L & L conviction on the claim that counsel, in conveying the one year probation offer, did not clarify whether there would be a withhold of adjudication. "What [Defendant] contends is competent substantial, evidence of a newly discovered, different, unconveyed plea offer is merely speculation based on misconstrued hearsay allegations in an affidavit contradicted by fragmental recitations of the previous plea offer which are in no way irreconcilable with the plea offer [overheard in the hallway]." State v. Downs, 2D22-3632 (9/15/23)

https://2dca.flcourts.gov/content/download/879501/opinion/223632_DC13_09152023_082905_i.pdf

HABEAS CORPUS: The purpose of a habeas corpus proceeding is to inquire into the legality of a petitioner's present detention, not to challenge the judicial action that put him in jail. Assuming, for the sake of argument, that the trial court committed sentencing errors in 1990 by believing HVFO sentencing to be

mandatory, error was not fundamental nor is the motion for relief timely. Richardson v. State, 5D22-3046 (9/15/23)

https://5dca.flcourts.gov/content/download/879454/opinion/223046_DC05_09152023_091312_i.pdf

COSTS: Although the State requested the sum of $150, it offered no proof that costs in excess of $100 had been incurred. $100 Is the cost of prosecution. McCullough v. State, 5D23-670 (9/15/23)

https://5dca.flcourts.gov/content/download/879493/opinion/230670_DC05_09152023_094333_i.pdf

THREE STRIKES LAW: 18 U.S.C. §3559 (the three-strikes law) provides that a person convicted of a serious violent felony shall receive a mandatory life sentence if he has previously been convicted of two or more serious violent felonies. A "serious violent felony" is (1) an enumerated offense, (2) one involving use or threatened use of physical force (elements clause), or (3) one that by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense (residual clause). Reliance on the residual clause may be unconstitutional, but the Supreme Court has not yet so held. Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES: Federal courts have jurisdiction to consider a second or successive motion for post conviction relief only if it is based on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously

unavailable, or if it is based on newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the movant guilty of the offense. But because the Supreme Court has not ruled on the constitutionality of the residual clause of the three-strikes law, a federal court lacks jurisdiction to rule on the merits. Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES: Only the Supreme Court can announce a new rule of constitutional law. The fact that the Supreme Court has decided that the residual clause of the analogous Armed Career Criminal Act is unconstitutionally vague is not a holding that the residual clause of the three-strikes law is unconstitutional too. "Jones and the dissenting opinion are wrong that a residual clause is a residual clause is a residual clause." "Although the three-strikes law's residual clause is 'similarly worded' to the residual clauses in Johnson, Dimaya, and Davis, we can't pluck the rules announced by those decisions and plop them onto Jones's challenge to a different statute in a different context." Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES (J. WILSON, DISSENT): "Viewing the rules of Johnson and Dimaya and Davis as specific only to the statutes they addressed is in essence holding that when the Supreme Court establishes a rule it can govern only that statute, and that applying the same principle to another statute necessarily requires a new and separate rule. But Supreme Court precedent shows otherwise. .

. [N]ot every extension of Supreme Court precedent to a new statute requires a new rule of constitutional law. A rule is not 'new' where it simply applies an existing rule in a way that would be obvious to reasonable jurists." Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES (J. WILSON, DISSENT): "The majority's holding that we lack jurisdiction to hear this appeal is alarming. If the majority's view is correct, then despite the Supreme Court's clear guidance in three recent decisions that residual clauses of this sort are unconstitutional. . .prisoners like Jones will be barred from vindicating their rights. And it is small comfort to suggest that such prisoners wait for us to strike down §3559(c)'s residual clause on plenary appeal. Such an occasion will not arise since the government has conceded that this residual clause is unconstitutional and, therefore, no longer seeks to apply it in criminal prosecutions. The majority thus leaves Jones and others like him to serve out unconstitutional sentences. . .[O]ur precedents do not require this injustice." Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: To warrant relief from death penalty, a claim of newly discovered evidence must be of such nature that it would probably produce a less severe sentence upon retrial. Defendant who fails to allege that he probably would be sentenced to life if the jury or trial court were told that he has ASD or PTSD makes a facially insufficient claim. Alleging a reasonable probability of a life

sentence at retrial is not equivalent to alleging a probable life sentence at a retrial and yields a facially insufficient claim. While the "reasonable probability" prejudice standard means a probability higher than mere chance, it does not mean a probability greater than fifty percent; conversely, the "probably" prejudice standard does mean a probability greater than fifty percent. Damren v. State, SC2023-15 (9/14/23)

https://supremecourt.flcourts.gov/content/download/879390/opinion/sc2023-0015.pdf

EVIDENCE-SIMILAR FACT: In homicide case, evidence that Defendant had murdered someone else two days before with the same gun is admissible to prove identity. Snyder v. State, 1D22-275 (9/13/23)

https://1dca.flcourts.gov/content/download/879324/opinion/download%3FdocumentVersionID=6ab8ee43-c98b-408d-be8b-e0c350810b69

COSTS: Costs of prosecution need not be requested. Defendant assented to transportation costs (§938.27(1)) by affirmatively stating he had no objection to it. Ellis v. State, 1D22-2896 (9/13/23)

https://1dca.flcourts.gov/content/download/879314/opinion/download%3FdocumentVersionID=ef621803-52eb-4be5-aaa4-e1b4aa80ac55

HABEAS CORPUS-PRETRIAL DETENTION: A petitioner seeking a writ of habeas corpus must make a prima facie case that his current detention is unlawful by submitting an affidavit or evidence demonstrating that his financial circumstances are such that the bail amount set by the trial court is tantamount to pretrial detention. Martinez v. State, 1D22-3779 (9/13/23)

https://1dca.flcourts.gov/content/download/879320/opinion/download%3FdocumentVersionID=e4471fa2-55f8-436d-9873-27de10018e9c

COSTS: Costs of investigation must be stricken where they had not been requested by the State, but they may be imposed on remand. Bradley v. State, 4D2022-0845 (9/13/23)

https://4dca.flcourts.gov/content/download/879331/opinion/download%3FdocumentVersionID=3cc7827a-ea9a-4df2-b3fc-c27bc3bf48e3

VOP-SENTENCING: Following an unsuccessful VOP evidentiary hearing, Defendant is entitled to a separate sentencing hearing on a separate date. Montoya v. State, 4D2022-2757 (9/13/23)

https://4dca.flcourts.gov/content/download/879332/opinion/download%3FdocumentVersionID=e8f86669-b9b0-4ca4-af64-0640c320d575