

SUPREME COURT OF FLORIDA

Harrell v. State

894 So. 2d 935 (Fla. 2005) · No. SC02-2244 · Decided February 10, 2005

SUMMARY

The Supreme Court of Florida held that merely filing a presentence motion to withdraw a plea does not preserve a claim under Florida Rule of Criminal Procedure 3.172(f) that the trial court failed to formally accept the plea. A defendant must specifically allege the failure of formal acceptance or invoke the rule, and the omission does not constitute fundamental error in these circumstances. The court approved the First District Court of Appeal's decision and disapproved *Miller v. State* to the extent inconsistent.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Cantero, J.; Pariente, C.J.; Wells, J.; Anstead, J.; Lewis, J.; Quince, J.; Bell, J.
JURISDICTION	Florida
DECIDED	February 10, 2005
DOCKET	SC02-2244
DISPOSITION	approved
PROCEDURAL POSTURE	Discretionary review of a certified conflict between the First and Fourth District Courts of Appeal concerning preservation of a claim that a trial court failed formally to accept a guilty or no-contest plea before sentencing.
STANDARD OF REVIEW	Whether an issue was preserved for appellate review is governed by the contemporaneous-objection and issue-preservation requirements. The court also considered whether the alleged error constituted fundamental error.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Florida resolving a certified conflict.
PARTIES	Dwayne Lamont Harrell v. State of Florida

TOPICS

plea bargaining

preservation of error

criminal procedure

appellate procedure

sentencing

PRACTICE AREAS

criminal procedure

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plea withdrawal

QUESTIONS PRESENTED

1. Whether merely filing a pre-sentencing motion to withdraw a plea preserves for appellate review a claim that the trial court failed formally to accept the plea under Florida Rule of Criminal Procedure 3.172(f) when the motion does not allege that failure.
2. Whether the trial court's failure formally to accept the plea constitutes fundamental error that may be raised for the first time on appeal.

HOLDINGS

1. The mere filing of a pre-sentencing motion to withdraw a plea does not preserve a claim that the defendant was entitled to withdraw the plea because the trial court failed formally to accept it under Florida Rule of Criminal Procedure 3.172(f). The defendant must specifically invoke Rule 3.172(f) or allege in the motion that the trial court failed formally to accept the plea.
2. The failure formally to accept a plea does not constitute fundamental error permitting appellate review when the defendant failed to preserve the issue.
3. Before sentencing, Rule 3.172(f) governs withdrawal when a plea has not been formally accepted, while Rule 3.170(f) governs discretionary or good-cause withdrawal for other reasons; the two provisions must be read in pari materia.

KEY QUOTATIONS

“To preserve the claim, a defendant must specifically allege the trial court's failure to formally accept the plea.” (at 941)

“Formal acceptance of the plea is precisely what it implies: a formality.” (at 941)

FACTUAL BACKGROUND

Harrell was indicted for first-degree murder, armed robbery, and possession of a firearm by a convicted felon. He entered a negotiated no-contest plea to the firearm charge, reserving the right to appeal denial of a dispositive suppression motion, and accepted a fifteen-year habitual-offender sentence in exchange for dismissal of the other charges. Although the trial court conducted a plea colloquy and scheduled sentencing, it apparently failed formally to accept the plea as required by Florida Rule of Criminal Procedure 3.172(f). Harrell's pre-sentencing motion to withdraw alleged intimidation and disputed his habitual-offender status, but did not allege that the court had failed formally to accept the plea; he raised that argument for the first time on appeal.

PROCEDURAL HISTORY

Harrell pleaded no contest to possession of a firearm by a convicted felon under a plea agreement and moved before sentencing to withdraw the plea, alleging intimidation and disputing his habitual-offender status. The trial court denied the motion. The First District affirmed, holding that Harrell had not preserved the argument that the plea had not been formally accepted and certifying conflict with *Miller v. State*. The Supreme Court of Florida granted discretionary review, approved the First District's decision, and disapproved *Miller* to the extent inconsistent with its opinion.

DISPOSITION

approved

CASES CITED

- *Harrell v. State*, 826 So. 2d 1059, 1060 (Fla. 1st DCA 2002)
- *Miller v. State*, 775 So. 2d 394, 394-395 & n.1 (Fla. 4th DCA 2000)
- *Harrell v. State*, 837 So. 2d 409 (Fla. 2003)
- *Bass v. State*, 541 So. 2d 1336, 1338 (Fla. 4th DCA 1989)
- *Turner v. State*, 616 So. 2d 194, 194 (Fla. 3d DCA 1993)
- *Demartine v. State*, 647 So. 2d 900, 900, 902 (Fla. 4th DCA 1994)
- *State v. Partlow*, 840 So. 2d 1040, 1042 (Fla. 2003)
- *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982)
- *Rodriguez v. State*, 609 So. 2d 493, 499 (Fla. 1992)
- *Castor v. State*, 365 So. 2d 701, 703 (Fla. 1978)
- *State v. T.G.*, 800 So. 2d 204, 210 (Fla. 2001)
- *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003)
- *Smith v. State*, 521 So. 2d 106, 108 (Fla. 1988)
- *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960)