

FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Gazoombi v. State of Florida

No. 1D2024-0171 (Fla. 1st DCA Mar. 20, 2025) (en banc) · No. 1D2024-0171 · Decided March 20, 2025

SUMMARY

The Florida First District Court of Appeal, sitting en banc, affirmed Eric J. Gazoombi’s seven-year habitual-felony-offender sentence for felony battery. The court held that it had jurisdiction to review a timely appeal challenging the refusal to impose a downward departure, but that a defendant’s claim that the trial court should have selected a different sentence within the authorized range is not a cognizable basis for appellate relief. The court receded from prior decisions to the extent they treated such claims as jurisdictional dismissals rather than affirmances.

CASE DETAILS

COURT	First District Court of Appeal of Florida
WRITING FOR THE COURT	Tanenbaum, J.; Osterhaus, C.J.; Lewis, J.; Roberts, J.; Rowe, J.; Ray, J.; Bilbrey, J.; Winokur, J.; M.K. Thomas, J.; Long, J.; Kelsey, J.; Nordby, J. (did not participate)
JURISDICTION	Florida First District Court of Appeal
DECIDED	March 20, 2025
DOCKET	1D2024-0171
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gazoombi appealed his judgment of conviction and sentencing order after a jury convicted him of felony battery and the circuit court imposed a seven-year habitual-felony-offender sentence followed by three years of mental-health probation. He challenged the refusal to impose a downward-departure sentence and the determination that he qualified as a habitual felony offender.
STANDARD OF REVIEW	Whether a valid legal ground and adequate factual support exist for a downward departure is reviewed under the Banks mixed-question standard: the correct legal rule must have been applied and the ruling must be supported by competent substantial evidence. The sentencing court's discretionary decision whether to impose a departure sentence is reviewed for abuse of discretion, but a defendant has no cognizable appellate claim to a particular sentence within an authorized statutory

	range absent a constitutional or other legally cognizable sentencing error.
PRECEDENTIAL VALUE	Published en banc opinion; binding precedent in the First District of Florida and persuasive authority elsewhere, subject to later review or modification.
PARTIES	Eric J. Gazoombi v. State of Florida

TOPICS

sentencing appellate jurisdiction appellate procedure criminal procedure due process

PRACTICE AREAS

criminal appellate practice criminal sentencing Florida appellate procedure constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether the First District had appellate jurisdiction to review a timely appeal challenging a final sentencing order and the refusal to impose a downward-departure sentence.
2. Whether a defendant may obtain appellate relief merely by asserting that the trial court abused its discretion by selecting a sentence within the statutorily authorized range rather than imposing a downward departure.
3. Whether the trial court's determination that there was no legal or factual basis for departure was challenged or shown to be erroneous.
4. Whether Gazoombi demonstrated harmful error in his judgment of conviction.

HOLDINGS

1. A district court of appeal has jurisdiction to review a timely appeal from a final sentencing order, including a claim that the trial court refused to impose a downward departure. The claim is not jurisdictionally defective merely because it ultimately fails to establish a basis for appellate relief.
2. When the appellate court has jurisdiction over the order appealed but the appellant fails to demonstrate legally cognizable harmful error warranting reversal or vacatur, the proper disposition is affirmance, not dismissal of part of the appeal.
3. A defendant's claim that the trial court should have imposed a downward-departure sentence, without alleging that the court misunderstood its authority, failed to apply the correct legal rule, lacked competent substantial evidence for its determination, or violated a constitutional right, is not a cognizable claim for appellate relief.
4. The decision does not foreclose appellate relief for a constitutional claim that the sentencing proceeding was fundamentally unfair or violated due process, even when the sentence imposed was within the statutory range.

KEY QUOTATIONS

“As to the latter, a bald assertion that the trial court should have imposed a sentence different from the one it did is not a cognizable claim for appellate relief.” (at 2)

“Simply put, in the exercise of its appellate jurisdiction, if a district court determines there has been no showing of harmful error committed by the trial court, there is no basis for reversal or vacatur—an affirmance then being the only authorized disposition.” (at 8)

“when faced with a timely appeal of an order over which we have jurisdiction, if we are left wanting for an argument demonstrating a legally cognizable, harmful error that supports an appellate remedy, we should simply affirm.” (at 12)

FACTUAL BACKGROUND

A jury convicted Gazoombi of felony battery arising from a barroom altercation. Before sentencing, he sought a downward departure based on impaired capacity, alleged victim provocation, mental-health or disability treatment needs, proportionality, and the alleged inadequacy of the sentencing scoresheet. The trial court heard testimony from family members and a clinical psychologist but found no sufficient legal or factual basis for departure, determined that the victim had not initiated the altercation, and imposed a seven-year habitual-felony-offender sentence within the applicable two-to-ten-year range.

PROCEDURAL HISTORY

After the jury conviction, Gazoombi moved for a downward departure under sections 921.0026 and 921.00265, Florida Statutes. The circuit court found no legal or factual basis for departure, determined that Gazoombi qualified as a habitual felony offender, and imposed a sentence within the authorized range. The First District affirmed en banc, receded from Wilson and Parrish to the extent they treated review of a refusal to depart as jurisdictionally barred, and held that such a claim should be affirmed rather than dismissed when the court has jurisdiction but the claim lacks merit.

DISPOSITION

affirmed

CASES CITED

- Wilson v. State, 306 So. 3d 1267 (Fla. 1st DCA 2020)
- Parrish v. State, 349 So. 3d 485 (Fla. 1st DCA 2022)
- Manuel v. State, 342 So. 3d 289 (Fla. 1st DCA 2022)
- Scott v. State, No. 1D2023-1988, 2025 WL 44367, at *2 (Fla. 1st DCA Jan. 8, 2025)
- Hall v. State, 823 So. 2d 757, 763 (Fla. 2002)
- Schwob Co. of Fla. v. Fla. Indus. Comm'n, 11 So. 2d 782, 783 (Fla. 1942)
- Ortiz v. United States, 585 U.S. 427, 455, 465 (2018)
- In re Sanborn, 148 U.S. 222, 224 (1893)

- The Alicia, 74 U.S. 571, 573 (1869)
- Bush v. Schiavo, 885 So. 2d 321, 331 (Fla. 2004)
- State v. Jefferson, 758 So. 2d 661, 664 (Fla. 2000)
- Justice v. State, 674 So. 2d 123, 125 (Fla. 1996)
- State ex rel. Diamond Berk Ins. Agency, Inc. v. Carroll, 102 So. 2d 129, 130 (Fla. 1958)
- State v. Hull, 20 So. 762, 763-64 (Fla. 1896)
- Atl. Coast Line R. Co. v. Benedict Pineapple Co., 42 So. 529, 532 (Fla. 1906) (Shackleford, C.J., concurring)
- Banks v. State, 732 So. 2d 1065, 1067-68 (Fla. 1999)
- Stanford v. State, 110 So. 2d 1, 2 n.4 (Fla. 1959)
- Banks v. State, 342 So. 2d 469, 470 (Fla. 1976)
- Booker v. State, 514 So. 2d 1079, 1081 (Fla. 1987)
- Brown v. State, 13 So. 2d 458, 461 (Fla. 1943)
- Nawaz v. State, 28 So. 3d 122, 125 (Fla. 1st DCA 2010)
- State v. Scott, 439 So. 2d 219, 220 (Fla. 1983)
- Trotter v. State, 825 So. 2d 362, 367-68 (Fla. 2002)
- Jackson v. State, 767 So. 2d 1156, 1159-60 (Fla. 2000)
- Manyak v. State, 50 Fla. L. Weekly D276e (Fla. 2d DCA Jan. 31, 2025)
- White v. State, 350 So. 3d 401 (Fla. 2d DCA 2022)
- Williams v. State, 286 So. 3d 892 (Fla. 2d DCA 2019)
- Camacho v. State, 164 So. 3d 45, 48 (Fla. 2d DCA 2015)
- McCorvey v. State, 872 So. 2d 395, 396 (Fla. 1st DCA 2004)
- Barnhill v. State, 140 So. 3d 1055, 1061 (Fla. 2d DCA 2014)