

SIXTH DISTRICT COURT OF APPEAL OF FLORIDA

Bobby Lee Saviory v. State of Florida

Case No. 6D2023-2740 (Fla. 6th DCA Apr. 25, 2025) · No. 6D2023-2740 · Decided April 25, 2025

SUMMARY

The Sixth District Court of Appeal of Florida affirmed a corrected written sentence in Bobby Lee Saviory’s criminal case. The court held that the trial court had orally imposed legal sentences, and that correcting a scrivener’s error in the written sentencing documents was a ministerial correction rather than a resentencing requiring appointment of counsel. The opinion also addressed the scope of the prior remand concerning Saviory’s Florida Rule of Criminal Procedure 3.800(a) motion.

CASE DETAILS

COURT	Sixth District Court of Appeal of Florida
WRITING FOR THE COURT	Per Curiam; Chief Judge Blair Allen Traver; Judge Robert J. Stargel; Judge F. Scott Wozniak
JURISDICTION	Sixth District Court of Appeal of Florida
DECIDED	April 25, 2025
DOCKET	6D2023-2740
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the summary denial and subsequent correction of a sentence under Florida Rule of Criminal Procedure 3.800(a).
STANDARD OF REVIEW	De novo review of the legality of a sentence and the legal effect of the sentencing transcript and written judgment.
PRECEDENTIAL VALUE	Published opinion; precedential status is identified as published in the supplied metadata, although the primary disposition is per curiam and the substantive reasoning appears in a special concurrence.
PARTIES	Bobby Lee Saviory v. State of Florida

TOPICS

- post-conviction relief
- sentence modification
- right to counsel
- criminal procedure
- appellate procedure

PRACTICE AREAS

- Criminal law
- Postconviction relief
- Appellate procedure
- Sentencing

QUESTIONS PRESENTED

1. Whether the successor postconviction court conducted an impermissible resentencing without appointing counsel when it corrected the written sentencing documents after reviewing the original sentencing transcript.
2. Whether Saviory was entitled to relief under Florida Rule of Criminal Procedure 3.800(a) when the oral sentence was legal but the written sentence contained a scrivener's error.

HOLDINGS

1. The successor postconviction court did not conduct a resentencing requiring appointment of counsel; it performed the ministerial task of correcting written sentencing documents to conform to the legal sentence orally imposed at the original sentencing.
2. Saviory was not entitled to correction of an illegal sentence because the sentence orally imposed by the trial court was legal; the written judgment could be corrected to reflect that oral sentence.

KEY QUOTATIONS

“When ordered in the postconviction context, “resentencing is an entirely new, independent proceeding.”” (at 4)

“Thus, “[a] defendant has a right to be present and to be represented by counsel at any resentencing proceeding from a rule 3.800(a) motion[.]”” (at 4)

“But this is not what the Fifth District mandated, and regardless of its description, this is not what the successor postconviction court ultimately did.” (at 4)

“Still, this was not a “resentencing” because the Fifth District did not order a resentencing, and Saviory was not entitled to one when the trial court imposed a legal sentence from the start.” (at 5)

FACTUAL BACKGROUND

A jury found Saviory guilty in 2014 of attempted carjacking with a firearm, robbery with a firearm, and aggravated battery. The trial court orally imposed thirty years in prison on count one and fifteen years on count two, both legally permissible sentences, but the written judgment and sentence contained a scrivener's error that made the count-one sentence appear to exceed the statutory maximum. After reviewing the sentencing transcript on remand, the successor postconviction court corrected the written judgment nunc pro tunc to reflect the oral sentences.

PROCEDURAL HISTORY

Following a 2014 jury verdict, the trial court orally imposed legal sentences for attempted carjacking with a firearm and robbery with a firearm, but the written sentencing documents contained a scrivener's error that appeared to impose an illegal sentence on count one. Saviory moved to correct the sentence under Rule 3.800(a). The postconviction court summarily denied relief, and the Fifth District reversed and remanded for further proceedings. On remand, the successor postconviction court reviewed the sentencing transcript, determined that

the oral sentences were legal and that the written sentences had been transposed, and entered a corrected judgment and sentence nunc pro tunc to the original sentencing date. The Sixth District affirmed.

DISPOSITION

affirmed

CASES CITED

- Saviory v. State, 348 So. 3d 1206, 1207 (Fla. 5th DCA 2022)
- State v. Akins, 69 So. 3d 261, 269 (Fla. 2011)
- Taylor v. State, 140 So. 3d 526, 529 (Fla. 2014)
- State v. Scott, 439 So. 2d 219, 220-21 (Fla. 1983)
- Jordan v. State, 143 So. 3d 335, 338 (Fla. 2014)
- Acosta v. State, 46 So. 3d 1179, 1180 (Fla. 2d DCA 2010)
- Lovett v. State, 395 So. 3d 1113, 1115 (Fla. 6th DCA 2024)
- Williams v. State, 957 So. 2d 600, 603 (Fla. 2007)

OPINION

PER CURIAM.

SIXTH DISTRICT COURT OF APPEAL STATE OF FLORIDA
_____ Case No. 6D2023-2740 Lower Tribunal No. 13-CF-009878-
A-OR _____ BOBBY LEE SAVIORY, Appellant, v. STATE OF
FLORIDA, Appellee. _____ Appeal from the Circuit Court for
Orange County. Luis F. Calderon, Judge. April 25, 2025 PER CURIAM. AFFIRMED.

STARGEL and WOZNIAK, JJ., concur. TRAVER, C.J., concurs specially, with opinion.
_____ NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION
FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED
_____ TRAVER, C.J., concurring specially. I agree with the decision
to affirm this appeal from a corrected written sentence, and I write to explain why Appellant,
Bobby Lee Saviory, is not entitled to relief.

In short, the trial court orally imposed a legal sentence against Saviory following a jury’s 2014 verdict that he had committed attempted carjacking with a firearm (count one) and robbery with a firearm (count two).¹ A scrivener’s error in the trial court’s written sentence led Saviory to file a motion asserting his sentence on count one was illegal. A divided Fifth District decision reversed the postconviction court’s summary denial of that motion, and a successor postconviction court misapprehended the Fifth District’s remand instructions in the later proceeding.

But Saviory had a legal sentence all along. The successor postconviction court thus did not err when it undertook the ministerial task to correct Saviory’s sentencing paperwork, even if it incorrectly described its actions as a “resentencing.” Following Saviory’s trial, the trial court’s written judgment and sentence reflected that it had imposed a thirty-year prison sentence for count one—attempted armed carjacking, a second-degree felony punishable by up to fifteen years in prison.

See §§ 812.133(2)(a), 777.04(1), (4)(c), Fla. Stat. (2013). These documents also 1 The jury also found Saviory guilty of aggravated battery (count three), and the trial court imposed a legal sentence on that charge that bears no relevance to this appeal. 2 revealed a fifteen-year prison sentence for count two—robbery with a firearm, a first-degree felony punishable by up to life in prison.

Id. § 812.13(2)(a). Saviory later moved to correct an illegal sentence under Florida Rule of Criminal Procedure 3.800(a), arguing that his sentence on count one exceeded the statutory maximum. The postconviction court summarily denied this motion, seemingly believing that the trial court had convicted Saviory of carjacking with a firearm, and not the lesser attempt-based crime.

Saviory appealed the denial, and the Fifth District “reverse[d] the summary denial and remand[ed] for further proceedings.” *Saviory v. State*, 348 So. 3d 1206, 1207 (Fla. 5th DCA 2022). It disagreed with the postconviction court’s rationale, concluding that Saviory’s written sentence for attempted carjacking with a firearm was above the statutory maximum. Id. It then noted that the State’s response asserted a different argument for affirmance—that the “orally pronounced sentences for counts I and II were transposed in the written sentences.” Id. And the State had asked the Fifth District to correct the sentences on both counts.

Id. (citing *State v. Akins*, 69 So. 3d 261, 269 (Fla. 2011) (“Generally, courts have held that a written order must conform to the oral pronouncement... because the written sentence is usually just a record of the actual sentence required to be pronounced in open court.” (citation omitted))).

The Fifth District declined this invitation, reasoning that “this argument was not raised below, and given the postconviction court’s disposition, the 3 sentencing transcript is understandably not part of our record.” Id. (citing Fla. R. App. P. 9.141(b)(2)(A)).

On remand, the successor postconviction court set a “status hearing,” at which it ordered Saviory’s presence. It announced that pursuant to the Fifth District’s mandate, it was “going to conduct a resentencing to conform the sentence that [the trial court had] imposed.” It explained that the Fifth District had “required [it] to resentence [Saviory] and to do so in [his] presence.” The successor postconviction court did not appoint Saviory counsel, nor did Saviory request representation.

After reviewing the sentencing transcript, the successor postconviction court then observed that the trial court had indeed made a simple scrivener's error—it had orally and legally sentenced Saviory to thirty years in prison on count one and fifteen years in prison on count two.² The successor postconviction court entered a revised judgment and sentence, *nunc pro tunc* to Saviory's original 2014 sentencing date.

Saviory now appeals that sentence because he claims the successor postconviction court violated his fundamental right to counsel by not appointing him a lawyer at his "resentencing." If the Fifth District had indeed mandated a resentencing proceeding, Saviory would have a meritorious argument. When ordered in the postconviction context, ² The successor postconviction court also imposed minimum mandatory sentences on counts one and two that Saviory does not challenge, perhaps because he has already served the time.

⁴ "resentencing is an entirely new, independent proceeding." *Taylor v. State*, 140 So. 3d 526, 529 (Fla. 2014). Accordingly, a defendant subject to resentencing must be afforded full due process considerations, including the right to counsel. *State v. Scott*, 439 So. 2d 219, 220–21 (Fla. 1983) (holding that once court determined that sentence was illegal, full panoply of due process considerations attached, and so defendant must be present at sentencing correction).

Thus, "[a] defendant has a right to be present and to be represented by counsel at any resentencing proceeding from a rule 3.800(a) motion[.]" *Jordan v. State*, 143 So. 3d 335, 338 (Fla. 2014) (quoting *Acosta v. State*, 46 So. 3d 1179, 1180 (Fla. 2d DCA 2010)). But this is not what the Fifth District mandated, and regardless of its description, this is not what the successor postconviction court ultimately did.

The Fifth District remanded for further proceedings on Saviory's rule 3.800(a) motion, which it concluded it could not resolve without the benefit of the trial court's sentencing transcript. See *Saviory*, 348 So. 3d at 1207. That is because "a trial court's 'oral pronouncement of a sentence controls over the written sentencing document.'" *Lovett v. State*, 395 So.

3d 1113, 1115 (Fla. 6th DCA 2024) (quoting *Williams v. State*, 957 So. 2d 600, 603 (Fla. 2007)). Thus, the successor postconviction court acted properly when it evaluated the sentencing transcript and concluded that it did not support Saviory's motion to correct illegal sentence. See *id.* At that point, though, the successor postconviction court should have denied ⁵ Saviory's motion, attached the sentencing transcript illustrating the scrivener's error to its order, and made the ministerial corrections necessary to correct the error.

See *id.* Still, this was not a "resentencing" because the Fifth District did not order a resentencing, and Saviory was not entitled to one when the trial court imposed a legal sentence from the start. For these reasons, I concur fully in the decision to affirm Saviory's corrected written sentence.

Blair Allen, Public Defender, and Rachel Paige Roebuck,
Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Douglas T. Squire, Assistant Attorney
General, Daytona Beach, for Appellee. 6

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