

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Shine v. State

129 So. 3d 449 (Fla. 1st DCA 2013) · Decided December 31, 2013

SUMMARY

The Florida First District Court of Appeal affirmed in part, reversed in part, and remanded a summary denial of a Rule 3.800(a) post-conviction motion. The court held that the defendant could not be habitualized for certain controlled-substance offenses and that the 20-year sentence imposed for possession of cannabis with intent to sell appeared to exceed the statutory maximum.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per Curiam; Clark; Wetherell; Ray
JURISDICTION	Florida
DECIDED	December 31, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the summary denial of a motion for postconviction relief under Florida Rule of Criminal Procedure 3.800(a).
STANDARD OF REVIEW	De novo review of the summary denial of a rule 3.800(a) motion and the legality of a sentence.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Carneri Fred Shine v. State of Florida

TOPICS

- post-conviction relief
- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

- Florida criminal procedure
- postconviction relief
- sentencing

QUESTIONS PRESENTED

1. Whether Shine was improperly designated as a habitual felony offender for offenses relating to the purchase or possession of controlled substances.

2. Whether the 20-year sentence imposed on count III exceeded the applicable statutory maximum and was therefore illegal.
3. Whether collateral estoppel barred the habitualization claim based on the materials attached to the summary denial order.

HOLDINGS

1. Florida Statutes section 775.084(1)(a)(3) did not permit habitual-felony-offender treatment for the charged felonies because they related to the purchase or possession of controlled substances.
2. The 20-year sentence imposed for possession of cannabis with intent to sell exceeded the statutory maximum and appeared to be illegal.
3. The claim was not shown to be barred by collateral estoppel because the documents attached to the denial order did not demonstrate that the issue had previously been litigated and determined on the merits.

KEY QUOTATIONS

“relating to the purchase or the possession of a controlled substance.” (129 So. 3d 449)

“AFFIRMED IN PART; REVERSED IN PART, AND REMANDED.” (129 So. 3d 449)

FACTUAL BACKGROUND

Shine was designated and sentenced as a habitual felony offender for possession-with-intent-to-sell offenses involving cocaine and cannabis, including offenses charged in counts II, III, and IV. He received a 20-year habitual sentence on count III for possession of cannabis with intent to sell, although that offense was a third-degree felony carrying a maximum ordinary sentence of five years and a maximum habitual-felony-offender sentence of ten years. The appellate record did not establish that the habitualization issue had previously been litigated on the merits, and the attached documents did not refute either claim.

PROCEDURAL HISTORY

The postconviction court summarily denied nine claims. The appellate court affirmed the denial of seven claims without comment, but reversed as to claims challenging habitual-felony-offender treatment on counts II, III, and IV and the legality of the sentence imposed on count III. The case was remanded for further proceedings on those claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on the claims that Shine was improperly habitualized as to counts II, III, and IV and that the sentence imposed on count III was illegal.

CASES CITED

- Jones v. State, 988 So. 2d 15 (Fla. 2d DCA 2008)
- Harris v. State, 695 So. 2d 742 (Fla. 1st DCA 1996)
- Toler v. State, 493 So. 2d 489 (Fla. 1st DCA 1986)

OPINION

PER CURIAM.

PER CURIAM. Carneri Fred Shine appeals the summary denial of his motion seeking postconviction relief brought pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm, without comment, the postconviction court's denial of seven of the Appellant's nine claims.

However, as to his claims that he was improperly habitualized as to counts II, III, and IV and that an illegal sentence was imposed as to count III, we reverse. In the instant postconviction motion, the Appellant argued that he was improperly designated as a habitual felony offender (HFO) for the offenses of possession of cocaine with the intent to sell (count II), possession of cannabis with the intent to sell (count III), and possession of cocaine with the intent to sell within 200 feet of a public park (count IV).

This claim has merit, as section 775.084(1)(a)(3), Florida Statutes (1999), does not permit habitualization for a felony "relating to the purchase or the possession of a controlled substance." See Jones v. State, 988 So.2d 15 (Fla. 2d DCA 2008); Harris v. State, 695 So.2d 742 (Fla. 1st DCA 1996). Further, as the State concedes in its response to this Court's Toler¹ order, though the trial court indicated that this claim was barred by collateral estoppel, the documents attached to the order of denial do not demonstrate that this issue has been litigated and determined on the merits.

Additionally, the Appellant alleged that the trial court imposed a sentence in excess of the statutory maximum as to count III. The record reflects that a 20-year habitual sentence was imposed as to this offense. However, possession of cannabis with the intent to sell is a third-degree felony punishable by a sentence of up to five years in prison. See §§ 893.13(1)(a)(2); 775.082(3)(d), Fla. Stat. (1999).

Even if the HFO enhancement applied, this would only permit a 10-year prison sentence. See § 775.084(4)(a)(3), Fla. Stat. (1999). Therefore, the Appellant's sentence appears to be illegal. As the State concedes in its response, the trial court's order did not directly address this claim and it is not refuted by the documents attached to the order.

Accordingly, we reverse the trial court's order as to these claims and remand for further proceedings. AFFIRMED IN PART; REVERSED IN PART, AND REMANDED. CLARK, WETHERELL, and RAY, JJ., concur.. Toler v. State, 493 So.2d 489 (Fla. 1st DCA 1986).

