

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Principe Hormaeche v. State of Florida

Principe Hormaeche · No. No. 4D21-2071 · Decided July 6, 2022

SUMMARY

The Florida Fourth District Court of Appeal held that a defendant showed good cause to withdraw a pre-sentence no contest plea to two counts of vehicular homicide because defense counsel incorrectly advised him that excessive speed foreclosed a viable defense. The court concluded that excessive speed alone does not establish the recklessness required for vehicular homicide and reversed the order denying plea withdrawal and the resulting judgment of conviction.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Artau, J.; Damoorgian, J.; Forst, J.
JURISDICTION	Florida
DECIDED	July 6, 2022
DOCKET	No. 4D21-2071
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of a pre-sentence motion to withdraw an open no contest plea to two counts of vehicular homicide.
STANDARD OF REVIEW	The opinion does not expressly identify a standard of review; it reviews whether the record established good cause to withdraw a pre-sentence plea and whether counsel's advice was legally sound.
PRECEDENTIAL VALUE	Published Florida district court of appeal opinion; precedential status is subject to any timely motion for rehearing.
PARTIES	Principe Hormaeche v. State of Florida

TOPICS

- criminal procedure
- plea bargaining
- appellate procedure
- mens rea
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court erred in denying the defendant's pre-sentence motion under Florida Rule of Criminal Procedure 3.170(f) to withdraw his no contest plea when counsel failed to advise him of a viable defense.
2. Whether excessive speed alone is sufficient to establish the recklessness required for vehicular homicide or to foreclose a defense that the defendant's conduct was merely careless rather than reckless.

HOLDINGS

1. An attorney's failure to advise a defendant of a viable defense constitutes good cause under Florida Rule of Criminal Procedure 3.170(f) to permit withdrawal of a guilty or no contest plea before sentencing. Once good cause is shown, the defendant is entitled as a matter of right to withdraw the plea.
2. Excessive speed alone is not sufficient to establish the recklessness required for vehicular homicide and does not, by itself, foreclose a defense that the defendant's conduct was merely careless or negligent.

KEY QUOTATIONS

“An attorney’s failure to advise his or her client of a viable defense constitutes “good cause” to allow the client to withdraw his or her plea prior to sentencing.”

“That is, his excessive speed at the time of the collision was not, alone, sufficient to foreclose his ability to mount a defense to the vehicular homicide charges on grounds that his conduct was merely careless as opposed to reckless.”

“Once “good cause” for the defendant to withdraw his plea was shown prior to sentencing, the trial court was “obligated to allow the defendant as a matter of right to withdraw [his] plea[.]””

FACTUAL BACKGROUND

The defendant's Toyota Camry collided head-on with the driver's side of a Nissan Sentra in a signal-controlled intersection, killing two people. The collision occurred on a clear, dry afternoon while the defendant was traveling approximately twenty-two miles per hour above the posted speed limit and failed to brake until entering the intersection. The record also included evidence that the traffic signal had been red for seven seconds and that the defendant may have been distracted by cellular-phone activity, but there was no evidence that he was swerving, weaving through traffic, or endangering pedestrians or bicyclists. Defense counsel advised the defendant that his speeding precluded a viable defense to vehicular homicide, and the defendant testified that this advice caused him to enter the no contest plea.

PROCEDURAL HISTORY

The defendant entered an open no contest plea to two vehicular-homicide counts after a fatal automobile collision. Before sentencing, he moved under Florida Rule of Criminal Procedure 3.170(f) to withdraw the plea, asserting that counsel mistakenly advised him that his excessive speed foreclosed a viable defense. After hearing

testimony from the defendant and defense counsel, the circuit court denied the motion and entered judgment of conviction. The Fourth District reversed and remanded with instructions to permit withdrawal of the plea.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order denying the defendant's pre-sentence motion to withdraw his plea and the resulting judgment of conviction; instruct the trial court to allow the defendant to withdraw his plea and conduct further proceedings consistent with the opinion.

CASES CITED

- Luzardo v. State, 147 So. 3d 1083, 1085-86 (Fla. 3d DCA 2014)
- House v. State, 831 So. 2d 1230, 1233 (Fla. 2d DCA 2002)
- Johnson v. State, 971 So. 2d 212, 215 (Fla. 4th DCA 2008)
- Collins v. State, 858 So. 2d 1197, 1198 (Fla. 4th DCA 2003)
- Snodgrass v. State, 837 So. 2d 507, 508 (Fla. 4th DCA 2003)
- Wagner v. State, 895 So. 2d 453, 456 (Fla. 5th DCA 2005)
- Rubinger v. State, 98 So. 3d 659, 662 (Fla. 4th DCA 2012)
- State v. Desange, 294 So. 3d 433, 437-38 (Fla. 2d DCA 2020)
- Pitts v. State, 473 So. 2d 1370, 1373 (Fla. 1st DCA 1985)
- C.D. v. State, 356 So. 2d 1249, 1249 (Fla. 3d DCA 1978)
- Damoah v. State, 189 So. 3d 316, 319-20 (Fla. 4th DCA 2016)
- Santisteban v. State, 72 So. 3d 187, 195 (Fla. 4th DCA 2011)
- Harris v. State, 318 So. 3d 645, 647-48 (Fla. 2d DCA 2021)
- Stewart v. State, 315 So. 3d 756, 758 (Fla. 4th DCA 2021)
- Smith v. State, 840 So. 2d 404, 406 (Fla. 4th DCA 2003)