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Preventing Manifest Injustice in Florida

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Key Concepts in Preventing Manifest Injustice in Florida
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Manifest injustice is that state of affairs when an inmate comes to realize that his/her due process rights have been violated. Manifest injustice has many aspects. It can often be found by examining harmful, fundamental errors. Harmful, fundamental errors can be brought to the court's attention via a petition to relax the law of the case. One way to ensure that the American criminal justice system remains untainted from actions and/or omissions which deny due process is with a habeas corpus petition. It is a good idea to keep the following in mind when reading a trial transcript and appellate opinions: Would a reasonable person have come to the same conclusion as the trial court and/or appellate court did? A court has habeas corpus jurisdiction either through appellate review or through original proceedings. § 9.100, Florida Statutes (2014). This article is merely an overview of black letter law topics. Judge Padovano's *Florida Appellate Practice* is much more in depth.

DUE PROCESS

Due process is the protection of the individual against arbitrary action. *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U.S. 292, 302; 57 S.Ct. 724; 81 L.Ed. 1093 (1937). Moreover, the denial of due process is fundamental error. *Verizon ex. rel. MCI v. Department of Corrections*, 988 So.2d 1148, 1151 (Fla. 1st DCA 2008)

FUNDAMENTAL ERRORS

While § 924.051, Florida Statutes (2014), codifies fundamental error, this article will focus on how decisional law construes fundamental error in Florida. The determination of whether fundamental error has occurred requires an analysis of all the circumstances of the case. *Martinez v. State*, 933 So.2d 1155, 1167 (Fla. 3d DCA 2006) Fundamental error is found by carefully examining the record; studying the evidence presented, the defenses raised, and the verdict rendered. Examine what the evidence revealed. Was the evidence consistent with the theory of defense? *Martinez*, 933 So. 2d at 1167.

Fundamental error occurs when the omission is material to what the jury must consider in order to convict. (Padovano, note 17, 617). A fundamental error is described as one where the interests of justice present a compelling demand for its application. *Sochor v. State*, 619 So.2d 285, 290 (Fla. 1993). It

reaches down into whether the trial itself is legal to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. *Gudinas v. State*, 693 So.2d 953, 961 (Fla. 1997). The error must amount to a denial of due process. *Sochor v. State*, 619 So. 2d 285 (Fla. 1993) quoting *Castor v. State*, 365 So.2d 701 (Fla. 1978). Double jeopardy, the violation of due process of law, a conviction for an offense that did not exist, and failing to object to a conviction for an uncharged offense are all fundamental errors. (Padovano, 615) The applicability of the fundamental error exception may depend on the degree of the error. (Padovano, 616). For example, ordinarily, an information or indictment needs to be challenged at the trial level. (Padovano, 616) However, it is fundamental error to be convicted on an information or an indictment that is so defective that it failed to charge a crime. (Padovano, note 1, 616)

A failure to follow the procedures that are required to ensure that a litigant obtains a fair hearing will not be treated as harmless. (Padovano, 392)

A finding is clearly erroneous when the finding is without the support of any substantial evidence. Is clearly against the weight of the evidence or that the trial court has misapplied the law to the established facts. (Padovano, 379) If there is no evidence to support the finding of facts made by the judge, the

appellate court will have no other choice but to reverse the decision. (Padovano,381)

"Where it is clear from the factual basis presented at the plea hearing that the defendant could not have been convicted of the crime to which he has pleaded guilty, fundamental error has occurred. This can be corrected on appeal. Where, however, the trial court fails completely to develop a factual basis for the plea, withdrawal of the plea may still be denied in the absence of a showing that withdrawal is necessary to correct a manifest injustice." *Williams v. State*, 316 So.2d 267, 273 (Fla. 1975)

The sufficiency of the evidence can be raised for the first time on appeal if the evidence did not show that a crime was committed. (Padovano,616) On the other hand, if the claim is that the evidence fails to prove an element of a crime for a particular level of the crime, the error is not fundamental as long as the evidence show that a crime was committed.

(Padovano,616)

An error may be harmful, but not fundamental.

(Padovano,619) A fundamental error excuses the need for a contemporaneous objection. (Padovano,619) A fundamental error is a prejudicial error (Padovano,619) An error may have been harmful because it contributed to the verdict. However, it will not require reversal unless it was preserved below or unless it qualifies as a fundamental error. (Padovano,619)

An argument may be so inflammatory that it requires reversal even when not preserved below. (Padovano, 617)

If instructions to the jury fail to correctly define an element of a crime, and if facts pertaining to that element are in dispute, then we have a fundamental error exception.

(Padovano, 617) Absent an objection at trial, the complained of instruction may be raised on appeal only if fundamental error has occurred. *Martinez v. State*, 933 So. 2d 1155, 1158 (Fla. 3d DCA (2006) When no objection was raised below, in order to determine if fundamental error occurred when a faulty defense instruction is given, the court looks to whether the faulty instruction denied the defendant a fair trial. *Martinez v. State*, 933 So.2d 1155, 1162 (Fla. 3d DCA 2006) Fundamental error occurs when an instruction that is an incorrect statement of the law negates a defendant's sole defense because the jury is misled. *Martinez*, 933 So.2d at 1164.

It is harmful to erroneously admit collateral crime evidence. (Padovano, note 9, 621) Reversible error includes failing to appoint counsel and ex-parte contact between a judge and the jury. (Padovano, 622)

If a defendant is excluded from the proceedings, did that exclusion frustrate the fairness of the trial? (Padovano, 622) Denying an evidentiary hearing from a 3.850 motion is harmful

error. (Padovano, 622-623) Denying a hearing on a discovery violation is harmful if the violation caused procedural prejudice to the defendant. (Padovano, note 15, 623)

In the absence of an effective waiver, criminal convictions subject to fundamental error resulting from violations of basic constitutional double jeopardy or due process rights are per se harmful and reversible without any showing of prejudice. Fundamental errors are not subject to contemporaneous objection and rules of harmless error statutes. *Akins v. State*, 462 So.2d 1161, 1165-1166 (Fla. 5th DCA 1984)

The harmless error test requires the state to prove that the error complained of did not contribute to the verdict. (Padovano, 619) Admitting a confession in violation of a defendant's Miranda rights is subject to the harmless error test. (Padovano, 621) To be valid, waivers of fundamental constitutional rights, and of errors resulting from the rights being violated, must be made knowingly (with specific knowledge of the right or its violation), intentionally (purposefully and by affirmative action), and intelligently (with the aid and advice of competent, effective counsel) *Akins v. State*, 462 So. 2d 1161, 1166 (Fla. 5th DCA 1984)

Admitting hearsay evidence in violation of the defendant's right of confrontation is subject to the harmless error test. (Padovano, 621) The State must show, beyond a reasonable doubt,

that an improper comment on a defendant's post-arrest silence or a failure to testify at trial are harmless errors.

(Padovano, 621)

Jurisdictional issues can be raised in an appellate court even if it was not preserved below. (Padovano, 614) This is not the case with all constitutional issues. An error may be a constitutional error and yet might not be fundamental.

(Padovano, 614) For example, an improper comment on the failure of an accused to testify in a criminal case is not fundamental error. (Padovano, 614) A constitutional challenge to the validity of a statute, on its face, that is the subject of the charge against the defendant can be presented for the first time on appeal under the fundamental error exception. (Padovano, 613-615) The doctrine of fundamental error should be applied where the interests of justice present a compelling demand for its application. *Martinez*, 933 So.2d at 1162

MANIFEST INJUSTICE

Carefully examine fundamental errors through the following filter: Will a manifest injustice occur if the fundamental error is not corrected? Fundamental error and a manifest injustice result when a defendant is convicted of an offense for which the defendant could not have been convicted as a matter of law. *Miller v. State*, 988 So.2d 138, 139 (Fla.1st DCA 2008) In

addition, courts have found manifest injustice when application of the law of the case doctrine results in a harsher sentence for the defendants. *Green v. State*, 813 So.2d 184, 185 (Fla. 2nd DCA 2002)

THE LAW OF THE CASE

All points of law which have been adjudicated become the law of the case and are, except in exceptional circumstances, no longer open for discussion or consideration in subsequent proceedings. *Sigler v. State* 881 So.2d 14, 17 (Fla 4th DCA 2004) Quoting *Strazzula v. Hendrick*, 177 So. 2d 1, 2 (Fla. 1965) The law of the case "requires that questions of law actually decided on appeal govern the case in the same court and through all subsequent stages of the proceedings." *Engle v. Liggett Group, Inc.* 945 So. 2d 1240, 1266 (Fla. 2006), quoting *Strazzula*, 177 at 4. An appellate court has the power to reconsider and correct erroneous rulings notwithstanding that such rulings have become the law of the case where reliance on the previous decision will result in a manifest injustice. *Zolache v. State*, 687 So.2d 298, 299-300 (Fla. 4th DCA 1997)

HABEAS CORPUS

The habeas corpus petitioner should show "reasonable grounds to believe that a present, actual, and involuntary restraint on liberty is being imposed without authority of law and that no other remedy exists." (Kogan and Waters, 5) All Florida courts have habeas corpus writ jurisdiction either on appeal or by petitioning the court directly without a notice of appeal (original jurisdiction, § 9.100 Florida Statutes, (2014). Habeas corpus jurisdiction is determined by the location of where the person is detained. *Alachua Regional Juvenile Detention Center v. T.O.*, 684 So.2d 814 (Fla. 1996)

The general rule is that a petition for writ of habeas corpus must be filed in the circuit court of the county where the petitioner is located. § 79.09, Florida Statutes (2014). There are exceptions to the general rule. For example, where the petition seeks to challenge the parole commission's determination of a petitioner's presumptive parole release date, the proper venue for such a claim is the Leon County Circuit Court where the Commission is headquartered. Where the habeas corpus petition attacks the validity of his underlying conviction by raising issues relating to the trial or plea, the petition must be filed in the circuit where the judgment of

conviction was imposed. *Harris v. State*, 133 So.3d 1169, note 2, 1171 (Fla. 3d DCA, 2014)

Fundamental errors are subject to correction at any time, on direct appeal, by post-conviction proceedings or by extraordinary remedy. *Akins v. State*, 462 So.2d 1161, 1165-1166 (Fla. 5th DCA 1984) If not effectively waived, violations of fundamental constitutional rights are subject to correction at any time whether on direct review by appeal by post-conviction relief or in habeas corpus proceedings. (*Akins v. State*, 462 So. 2d at 1167)

Federal habeas corpus jurisdiction can be invoked when the State court's denial of claims is contrary to clearly established Supreme Court law or based on an unreasonable determination of the facts. 28 U.S.C. § 2254(d) (2014)

CONCLUSION

The key concept is that fundamental error occurs when the omitted information is material to that which the jury must consider in order to convict. (Padovano, note 17, 617) Examine the trial transcripts, paying attention to the following. Scrutinize the evidence presented, the defenses raised and argued, and the verdict which was rendered. Was the evidence consistent with the theory of defense? Was the admitted evidence more prejudicial than probative of the elements of the

crime? Would a reasonable person have come to the same result as the trial court and/or the appellate court? Preventing manifest injustice in a habeas corpus petition, either on appeal or as an original proceeding, to relax the law of the case to bring fundamental errors to the court's attention will assist in maintaining the integrity of the American court system.

TABLE OF CASES

1. *Akins v. State*, 462 So.2d 1161 (Fla 5th DCA 1984)
2. *Bain v. State*, 730 So.2d 296 (Fla. 2d DCA 1999)
3. *Castor v. State*, 365 So.2d 701 (Fla. 1978)
4. *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006)
5. *Green v. State*, 813 So. 2d 184 (Fla. 2d DCA 2002)
6. *Gudinas v. State*, 693 So. 2d 953 (Fla. 1997)
7. *Harris v. State*, 133 So. 3d 1169 (Fla. 3d DCA 2014)
8. *Martinez v. State*, 933 So.2d 1155 (Fla. 3d DCA 2006)
9. *Miller v. State*, 988 So. 2d 138 (Fla. 1st DCA 2008)
10. *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U.S. 292, 57 S. Ct. 724, 81 L.Ed. 1093 (1937)
11. *Sigler v. State*, 881 So.2d 14 (Fla. 4th DCA 2004)
12. *Sochor v. State*, 619 So.2d 285 (Fla. 1993)
13. *Strazzula v. Hendrick*, 177 So.2d 1 (Fla. 1965)
14. *Verizon ex. rel. MCI v. Department of Corrections*, 988 So.2d 1148 (Fla 1st DCA 2008)
15. *Williams v. State*, 316 So.2d 267 (Fla. 1975)
16. *Zolache v. State*, 687 So.2d 298 (Fla. 4th DCA 1997)

STATUTES CITED

FEDERAL

1. 28 U.S.C. 2254(d)

FLORIDA

1. § 9.100, Florida Statutes (2014)
2. § 79.09, Florida Statutes (2014)
3. § 924.051, Florida Statutes (2014)

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