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ESSAYS

“WHAT ARE MY CHANCES ON APPEAL?” COMPARING FULL APPELLATE DECISIONS TO PER CURIAM AFFIRMANCES

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“And as penalty for your crimes, you are sentenced to spend the rest of your life in prison” a judge proclaims from a perch high above the defendant. “You have the right to appeal. If you cannot afford a lawyer, one will be appointed for you.” These last words from the sentencing judge ring in the ears of the defendant as the last glimmer of hope for freedom. Wide-eyed, the defendant turns to the lawyer and asks, “What are my chances on appeal?” All criminal appeals in Florida begin this way—with the criminal conviction, the sentencing, and then that important question. But what is the realistic answer?

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I. BACKGROUND: CRIMINAL APPEALS IN FLORIDA

Criminal appeals are probably much the same everywhere in the United States, but because both state laws and local rules can differ, I begin with an overview of the process in Florida. When a convicted person requests an appeal by filing a notice of appeal, the appellate phase of the criminal process begins.¹ Most often, the appeal lands in one of Florida's five District Courts of Appeal.² The District Courts of Appeal have jurisdiction over appeals from the felony trial courts and juvenile courts,³ whereas death sentences are directly appealed to the Florida Supreme Court.⁴ While death cases attract the most media attention,⁵ the vast majority of criminal appeals are resolved in the District Courts.⁶ To illustrate, there were 388 adults on Florida's death row at the end of the 2015–2016 fiscal year,⁷ while there were 99,119 incarcerated on felony charges⁸ and 86,739 serving on felony probation.⁹ As for inmate admissions, there were 30,289 offenders admitted into Florida's prison system in fiscal 2015–

1. FLA. R. APP. P. 9.110(b) (indicating that filing of notice invokes jurisdiction of appellate court).

2. FLA. CONST. art. V, § 4.

3. FLA. CONST. art. V, § 4(b); *see also* FLA. R. APP. P. 9.030(b)(1)(A) (indicating that District Courts of Appeals have jurisdiction over “final orders of trial courts, not directly reviewable by the supreme court or a circuit court”).

4. FLA. CONST. art. V, § 3(b)(1) (providing that the Florida Supreme Court “[s]hall hear appeals from final judgments of trial courts imposing the death penalty”); *see also* FLA. R. APP. P. 9.030(a)(1)(A)(1) (indicating that the only criminal appeals over which the Florida Supreme Court has mandatory direct review are “final orders of courts imposing sentences of death”).

5. *See, e.g., Media Influence on Capital Cases*, CAPITAL PUNISHMENT IN CONTEXT, <https://capitalpunishmentincontext.org/issues/media> (last visited May 16, 2018) (addressing pre-trial publicity, judicial remedies, high-profile cases, and courtroom cameras).

6. *District Courts of Appeal*, FLA. CTS. (2018), <http://www.flcourts.org/florida-courts/district-court-appeal.stml>.

7. *Annual Statistics for Fiscal Year 2015–2016—Death Row*, FLA. DEP'T OF CORR. (June 30, 2016), http://www.dc.state.fl.us/pub/annual/1516/stats/im_deathrow.html.

8. *Annual Statistics for Fiscal Year 2015–2016—Inmate Population*, FLA. DEP'T OF CORR. (June 30, 2016), http://www.dc.state.fl.us/pub/annual/1516/stats/im_pop.html (reporting that “[t]he top five categories of primary offenses for which inmates are incarcerated are: burglary (16.4%), murder/manslaughter (14.9%), drug offenses (14.8%), robbery (12.9%), and sexual/lewd behavior (12.6%)”).

9. *Annual Statistics for Fiscal Year 2015–2016—Community Supervision Population—Felony Probation Most Common Type of Supervision*, FLA. DEP'T OF CORR. (June 30, 2016), http://www.dc.state.fl.us/pub/annual/1516/stats/csp_pop_quarter.html.

2016.¹⁰ Additionally, 138 juveniles were incarcerated in Florida during that same period,¹¹ 112 juveniles were placed on probation,¹² and 4,339 juveniles were placed in some sort of residential-commitment program.¹³ This means that of the 190,835 persons in Florida on some sort of felony sentence, approximately 99.8 percent of defendants' direct-appeal rights were to the District Courts of Appeal rather than to the Florida Supreme Court. Thus, the District Courts of Appeal are ultimately the essential appellate reviewer for the vast majority of criminal cases in Florida.¹⁴ Of course, not all criminal sentences with appellate rights are actually appealed.¹⁵ In fact, only a small percentage of convicted criminals actually exercise their appellate rights.¹⁶

10. *Annual Statistics for Fiscal Year 2015–2016—Inmate Admissions*, FLA. DEP'T OF CORR. (June 30, 2016), http://www.dc.state.fl.us/pub/annual/1516/stats/im_admis.html.

11. *Annual Statistics for Fiscal Year 2015–2016—Inmate Population—General Characteristics of Population*, FLA. DEP'T OF CORR. (June 30, 2016), http://www.dc.state.fl.us/pub/annual/1516/stats/ip_general.html (reporting number of inmates age 17 or younger sentenced as adults).

12. *Annual Statistics for Fiscal Year 2015–2016—Community Supervision Population—Average Age of Population Was 37.1 Years*, FLA. DEP'T OF CORR. (June 30, 2016), http://www.dc.state.fl.us/pub/annual/1516/stats/csp_age.html (indicating that twenty-four juveniles aged sixteen and below were on probation, drug-offender probation, or community control, and that eighty-eight seventeen-year-old juveniles were on probation, drug-offender probation, or community control, all after being sentenced as adults).

13. *2015–2016 Comprehensive Accountability Report—Residential Services*, FLA. DEP'T OF JUVENILE J. (2015–16), [http://www.djj.state.fl.us/docs/car-reports/\(2015-16-car\)-residential-\(2-03-17\)-final.pdf?sfvrsn=2](http://www.djj.state.fl.us/docs/car-reports/(2015-16-car)-residential-(2-03-17)-final.pdf?sfvrsn=2) (scrolling to page 4 reveals table captioned “Profile of Youth” that shows 3104 juveniles between the ages of eight and over eighteen (but presumably not yet nineteen) in non-secure residential facilities, 1012 juveniles between the ages of twelve and over eighteen (but presumably not yet nineteen) in high-risk residential facilities, and 233 juveniles between the ages of twelve and over eighteen (but presumably not yet nineteen) in maximum-risk residential facilities).

14. *District Courts of Appeal*, FLA. CTS. (2017), <http://www.flcourts.org/florida-courts/district-court-appeal.stml> (noting that “[t]he bulk of trial court decisions that are appealed are never heard by the [Florida] Supreme Court,” but “are reviewed by three-judge panels of the district courts of appeal”).

15. Most cases are resolved via plea bargaining. NEIL P. COHEN, STANLEY E. ADELMAN & LESLIE W. ABRAMSON, *CRIMINAL PROCEDURE: THE POST-INVESTIGATIVE PROCESS* 439 (4th ed. 2014). Pleas of guilty or nolo contendere waive the right to appeal most matters. FLA. R. CRIM. P. 3.172(b)(4) (indicating that pleading defendant must expressly reserve right to appeal or loses “the right to appeal all matters relating to the judgment, including the issue of guilt or innocence,” but noting as well that plea “does not impair the right to review by appropriate collateral attack”).

16. *Compare* FLORIDA OFFICE OF THE STATE COURTS ADMINISTRATOR, FY 2015–16 STATISTICAL REFERENCE GUIDE at 2-12 (n.d.) (showing total of 167,009 criminal

Once a notice of appeal is filed, the lawyers gather written transcriptions of the various proceedings in the trial court to create a record on appeal.¹⁷ This would include transcripts of any plea hearing or trial, the sentencing hearing, and any other motion hearings that were held by the trial court.¹⁸ Combined with these transcripts is the complete copy of the clerk's file.¹⁹ This would contain, for example, copies of the charging documents, written motions, and written court orders.²⁰ Once these items are gathered, the appellate attorney can begin a review of the record. Note that at this point, nothing may be added to or deleted from the record on appeal—what exists in the record exists, and what does not may not be added later.²¹ This places a great burden on trial attorneys to preserve the record by placing copies of relevant documents into evidence and specifically objecting to issues that might be legally problematic.

Once the entire record has been assembled, the appellate counsel must “master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal.”²² The appellate attorney then crafts the initial brief, which outlines any problems with the process from the lower court, and advocates for any legal relief that would be proper.²³

When an initial brief raises meritorious issues that need to be addressed on appeal, it is commonly referred to as a merit brief. A lawyer appointed to represent an indigent defendant on appeal might find, however, that the record does not reveal a

dispositions in Florida's Circuit and County Courts) with Appendix A, *infra* page 133 (showing total of 1794 criminal appeals in Fifth District Court of Appeal). Assuming that the appeal statistics for the Fifth District are comparable to those in Florida's four other Districts, the statewide total of criminal cases appealed would be roughly 8970, which yields an appeal rate of just over five percent.

17. FLA. R. APP. P. 9.200.

18. *Id.*

19. *Id.*

20. *Id.* (noting that record includes “all documents filed in the lower tribunal”).

21. *See, e.g.,* Ullah v. State, 679 So. 2d 1242, 1244 (Fla. 1st Dist. Ct. App. 1996) (recognizing “elemental” principle that “an appellate court may not consider matters outside the record”).

22. *In re Anders Briefs*, 581 So. 2d 149, 151 (Fla. 1991) (quoting *McCoy v. Ct. of App.*, 486 U.S. 429, 438–39 (1988)).

23. FLA. R. APP. P. 9.210(b) (describing structure and contents of initial brief).

meritorious issue, and would end up preparing what is known as an *Anders* brief instead.²⁴ In that situation, the lawyer

must, to the extent possible, remain in his role as advocate; at this stage of proceeding it is not for the lawyer to act as an unbiased judge of the merit of particular grounds for appeal. He or she is required to set out *any* irregularities in the trial process or other potential error which, although in his judgment not a basis for appellate relief, might, in the judgment of his client or another counselor or the court, be arguably meritorious. This is done in order that these potential claims not be overlooked.²⁵

The appointed lawyer (such as a public defender) also has a concomitant duty to the court of honesty and candor, and to refrain from advancing frivolous arguments.²⁶ In many criminal cases, the trial courts function correctly and there are no identifiable legal errors present in the record.²⁷ If, after such an evaluation, court-appointed counsel is led to the conclusion that the appeal is frivolous,²⁸ the public defender is placed in a

24. See *Anders v. Cal.*, 386 U.S. 738 (1967) (describing and discussing *Anders* brief and situations in which it can appropriately be filed).

25. *Chapman v. State*, 186 So. 3d 3, 5 n.2 (Fla. 2d Dist. Ct. App. 2015) (quoting *U.S. v. Blackwell*, 767 F.2d 1486, 1487–88 (11th Cir.1985)) (emphasis in original).

26. R. Regulating Fla. Bar 4-3.1 (describing counsel’s duty to make only meritorious claims, but also recognizing that counsel can “defend the proceeding as to require that every element of the case be established”), 4-3.3 (describing counsel’s duty of candor).

27. Nicole L. Waters, Anne Gallegos, James Green, & Martha Rozsi, *Criminal Appeals in State Courts*, Office of Justice Programs—Bureau of Justice Statistics, U.S. DEP’T OF JUSTICE, <https://www.bjs.gov/content/pub/pdf/casc.pdf> (Sept. 2015) (indicating that “[i]n more than half (52%) of all [criminal] appeals, the appellate court upheld the trial court decision”); cf. Martha C. Warner, *Anders in the Fifty States: Some Appellants’ Equal Protection Is More Equal Than Others*, 23 FLA. ST. U. L. REV. 625, 654 (1996) (pointing out that “[o]f those state courts that receive and review *Anders* briefs, the incidence of no-merit briefs varies widely even within a state’s appellate divisions,” that “in Florida, the Fourth District Court of Appeal reports that *Anders* briefs constitute approximately five percent of its total criminal filings, whereas in the Fifth District Court of Appeal, *Anders* briefs make up thirty-four percent of the total criminal filings,” and that other states’ experience with *Anders* briefs is “similar”).

28. A frivolous appeal is

so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect whatsoever that it can ever succeed. . . . It must be one so clearly untenable, or the insufficiency of which is so manifest on a bare inspection of the record and assignments of error, that its character may be determined without argument or research. An appeal is not frivolous where a substantial justiciable question can be spelled out of it, or from any part of it, even though such question is unlikely to be decided other than as the lower court decided it, i.e., against appellant or plaintiff in error.

conflict of ethical duties because court-appointed lawyers may not argue against their clients.²⁹ The solution to this dilemma is for the court-appointed lawyer to file an *Anders* brief (as opposed to a merit brief) and move to withdraw.³⁰ An *Anders* brief contains a complete factual and procedural summary of the case, an identification of any possible issues raised in the case, and a recitation of the law that the lawyer is relying on to resolve the issues raised.³¹ Note the difference here between appointed-public-defender appeals and private-lawyer criminal appeals. A private lawyer on a criminal case, when confronted with the same ethical dilemma, can resolve the issue by refusing to file a meritless initial brief and terminating the client-attorney relationship.³² An appointed public defender has no such escape hatch, thus the need for the *Anders* brief.³³

Treat v. State ex rel. Mitton, 163 So. 883, 883–84 (Fla. 1935) (footnote and citation omitted).

29. *Anders*, 386 U.S. at 744–45 (noting that appointed counsel must be an “active advocate,” that if counsel files an *Anders* brief because the appeal appears to be frivolous, the brief must refer to “anything in the record that might arguably support the appeal,” and that nothing in the *Anders* requirements is intended to “force appointed counsel to brief his case against his client,” but also pointing out that filing of *Anders* brief “merely” provides indigent defendant with the “advocacy which a nonindigent defendant is able to obtain”).

30. *See Anders Briefs*, 581 So. 2d at 151 (referring to counsel’s duty to review record carefully and noting that *Anders* brief must refer to “every arguable legal point in the record that might support an appeal”).

31. *See Anders*, 386 U.S. at 744 n.3 (highlighting then-current practice in D.C. Circuit and citing *Tate v. U.S.*, 359 F.2d 245 (D.C. Cir. 1966) and *Johnson v. U.S.* 360 F.2d 844 (D.C. Cir. 1966)); *see also Tate*, 359 F.2d at 253 (setting out procedure designed to “assure that no appointed counsel is permitted to withdraw from an appeal unless he has satisfied the court that after thorough investigation of the facts of the case and research of all legal issues involved he has discovered no non-frivolous issue on which an appeal might be argued,” and asserting that “[t]he fact that the chances of prevailing are slim is not a reason for withdrawal, but is rather a summons to conscientious counsel to devote his professional skill and pertinacity to the most effective presentation of which he is capable”); *Johnson*, 360 F.2d at 844–45 (indicating that counsel should “file a supporting memorandum analyzing the case legally, citing record references to the transcript . . . and also citing any case or cases upon which counsel relied in arriving at his ultimate conclusion” (footnote omitted)).

32. *Harold v. State*, 450 So. 2d 910, 913 (Fla. 5th Dist. Ct. App. 1984) (recognizing that “if private counsel determines that he cannot ethically and properly present his client’s appeal, he has the option to either 1) secure his client’s permission to dismiss the appeal, after fully disclosing to his client his opinion as to the merits of the appeal; 2) advise his client to obtain other counsel, meanwhile taking such steps as are reasonably necessary to avoid foreseeable prejudice to the rights of the client; or 3) move to withdraw from the case, refunding any portion of a pre-paid fee which has not yet been earned,” because in

After the parties have fully briefed the case, and after reviewing the record and reading the briefs from the parties, the District Court of Appeal decides the case by issuing a written opinion. This decision can take three forms: a formal written opinion, a citation opinion, or a per curiam affirmed (the PCA).³⁴ These three forms will be discussed in turn below. Of them, the formal written opinion must be broken down further because, as will become apparent, all written opinions are not equal in the eyes of a criminal appellant. Note that Florida's appellate system allows the PCA, and also has an absolute prohibition on Supreme Court jurisdiction if there is no opinion below.³⁵

II. ISSUES UNDERLYING THE ANSWER TO THE CHANCES-ON-APPEAL QUESTION

Almost all criminal appellants in Florida ask their appellate lawyers about their chances at appeal. In order to answer that question, the lawyer must understand the way in which District Courts of Appeal resolve questions. There are several different types of written opinions in Florida, and not all are equally significant for the average litigant. Some opinions that are counted as written opinions by the District Courts of Appeal for statistical purposes are actually quite meaningless to the average criminal appellant and are in fact only procedural orders. For the

any of these situations, the defendant who hired that lawyer “is free to seek other counsel who can argue his cause”).

33. *Id.* at 912–13. As a frame of reference, of the briefs that the author, an assistant public defender practicing in the Fifth District Court of Appeal, filed in that court during 2016, forty-one percent were *Anders* briefs.

34. The PCA is an order issued by the appellate court affirming the lower court's decision in full without any written explanation. *See, e.g.,* Steven Brannock & Sarah Weinzierl, *Confronting a PCA: Finding a Path Around a Brick Wall*, 32 STETSON L. REV. 367, 367 (2003); *see also id.* at 374 (pointing out that “all PCAs with dissenting or concurring opinions and most PCAs followed by citations are not reviewable by the Florida Supreme Court”).

35. *Id.* at 368 (explaining that Florida Supreme Court has discretionary review over appeals from District Court of Appeal decisions only if they “‘expressly and directly’ conflict with other [District Court of Appeal] or Florida Supreme Court decisions, expressly declare a statute valid, expressly construe the constitution, or expressly affect a class of state officers,” and noting that “[b]ecause a PCA does not ‘express’ anything, the Florida Supreme Court has no jurisdiction to consider a petition for discretionary review from a PCA” (footnote omitted)).

purposes of this paper, then, only direct criminal appeals will be counted.

The District Courts of Appeal often count post-conviction motion appeals as written opinions when answering the chances-on-appeal question.³⁶ But these should not be counted towards any percentage calculation of written opinions that underlies the answer because post-conviction orders occur only after the initial appeal is finished. Most often, these post-conviction motions are the result of a denial of a formal hearing by the lower court.³⁷ Orders from the District Court of Appeal on denial of hearing on post-conviction motion result only in remands to the trial courts for hearing.³⁸ Orders of this type are procedural in nature only. They should, then, not be counted as meaningful written opinions because that would result in double counting of a single appellant's case. Consider, for example, the fact that many criminal defendants accuse their trial lawyers of ineffectiveness.³⁹ This is usually handled through a motion under Rule 3.850.⁴⁰ Often, a trial court will deny Rule 3.850 motions without a hearing, overlooking the reality that ineffective-assistance claims can require a hearing.⁴¹ Many written opinions issued by District Courts of Appeal are in fact orders for trial courts to provide defendants with evidentiary hearings on their ineffective-assistance claims.⁴² These written opinions provide for more process but are generally not substantive in that they do not afford defendants real appellate relief from their sentences, just further opportunity for

36. *E.g.* *Brisbane v. State*, 5D16-3223 (Fla. 5th Dist. Ct. App. 2017).

37. *Id.* (noting that defendant had appealed “the summary denial of his motion for postconviction relief”).

38. *Id.* (“[W]e reverse and remand for the trial court to either attach records refuting the claim or to hold an evidentiary hearing.”).

39. *E.g.*, Anthony K. Black & Susan S. Matthey, *Advice to the Criminal Bar: Preparing Effectively for Allegations of Ineffectiveness*, 82 FLA. BAR J. 49, 49 (May 2008) (advising criminal lawyers to think of an ineffective-assistance claim as “a cost of doing business” because one is “almost inevitable at some point in your career”), available at <https://www.floridabar.org/news/tfb-journal/?durl=/DIVCOM/JN/jnjournal01.nsf/cb53c80c8fabd49d85256b5900678f6c/18071FAC27E5D55F85257435005DB7A4!opendocument>.

40. *Id.*

41. *Cf. id.* at 50 (explaining that some types of ineffective-assistance claims can be decided without hearings).

42. *E.g.*, *Saunders v. State*, 186 So. 3d 55, 56–57 (Fla. 5th Dist. Ct. App. 2016).

presenting evidence related to their ineffective-assistance claims.

Many written opinions are in fact orders granting defendants belated appeals. In answering the criminal appellant's posing of the chances-on-appeal question, these cases should also not be counted. The District Courts of Appeal routinely and properly grant petitions for belated appeal.⁴³ These orders should not be counted as meaningful written opinions because they are in fact only ministerial waivers of court rules that allow appellants to file initial briefs. They do not actually review the substance of appeals, or grant any kind of substantive relief. Further, any belated appeal will show up in the Court records a second time when the appellant completes the substantive initial brief. Therefore, counting the court's response to the initial petition for belated appeal as a meaningful written opinion would result in double counting. While it is important for defendants who inadvertently miss deadlines to be afforded their appellate rights, these written decisions are not what a defendant means by asking about real appellate relief. Instead, these written opinions are more in the nature of orders allowing direct appeals to proceed despite technical glitches in timing.⁴⁴

Further, not all appellate reversals have meaning to a criminal defendant. A written opinion on a technical issue such as reversing a \$150 cost charge on an 825-year sentence is meaningless to the criminal appellant.⁴⁵ Opinions that result in corrections to paperwork are in effect losses to criminal appellants because those opinions do nothing to advance the appellants' interests in achieving substantive success on appeal.

It is also true that even substantive reversals are sometimes meaningless. The revision of a concurrent prison sentence can appear substantive on its face but provide little to no benefit to a criminal defendant when viewed in the context of other charges.

43. *E.g.*, *Viqueira v. Roth*, 591 So. 2d 1147, 1148 (Fla. 3d Dist. Ct. App. 1992) (granting belated appeal of conviction and sentence).

44. This is not to disparage the value of these functions of the District Courts of Appeal, but only to point out that when analyzing how the courts are utilizing the PCA and affording relief to criminal appellants, the inclusion of these opinions in the written-opinion percentage would be a mistake. Using the higher number of apparently successful criminal appeals generated by counting these orders would mislead a defendant interested in knowing how many other defendants have won their substantive appeals.

45. *See Hall v. State*, 207 So. 3d 385 (Fla. 5th Dist. Ct. App. 2016).

For example, many times a defendant is sentenced to concurrent terms of prison on several different counts. If one count is struck (based on double jeopardy, for example), the conviction on any other count on which the concurrent sentence was based remains in effect. While persuading the court to strike one of the counts underlying a concurrent sentence could be considered an appellate success, the actual beneficial effect to the appellant is minimal. Unfortunately, this type of meaninglessness can be difficult to discover if it is not readily apparent from the content of the written opinion. This limitation means that some appeals counted as “successful” under the analysis used here were actually meaningless to the appellants in those cases. But the reverse is not true: if an appeal is determined to be insignificant to a client, then that determination is clear. Therefore, the final numbers shown in this analysis should be viewed as the maximum success rate on appeal.

The per curiam affirmed opinions used by the Florida District Courts of Appeal are meant to be utilized when the law is well settled on the issues presented or the principles of law upon which the decision rests are so generic that even reference to a citation would add nothing to Florida jurisprudence.⁴⁶ PCAs are so common in Florida that it could be fairly said that they are the default response of the District Courts of Appeal to criminal appeals.⁴⁷ The PCA is the worst possible result for a criminal defendant because it provides no guidance as to the Court’s reaction to, or analysis of, any issue raised in the initial brief.⁴⁸ Further, it cuts off any appellate jurisdiction in the Florida Supreme Court and essentially ends the defendant’s direct appeal.⁴⁹ While there are mechanisms for requesting a written opinion in the face of a PCA, the decision to write is entirely

46. Brannock & Weinzierl, *supra* note 34, at 369.

47. *Id.* at 368 (pointing out that “8,193 of 13,542 DCA rulings were PCAs” in 1998).

48. *Id.* at 369.

49. *Id.*; *see also* Fla. Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988) (holding that the Supreme Court of Florida lacks subject matter jurisdiction for review of PCAs from District Courts of Appeal, explaining that “[t]his Court in the broadest sense has subject-matter jurisdiction under . . . the Florida Constitution, over any decision of a district court that expressly addresses a question of law within the four corners of the opinion itself,” and explaining further that unless the opinion appealed from contains “a statement or citation effectively establishing a point of law upon which the decision rests,” the Court lacks jurisdiction to review it).

discretionary,⁵⁰ and a District Court rarely grants a request for a written opinion.

It is important, when discussing the PCA, to break down what function a written opinion performs within the system. A written opinion should be a coherent explanation for the litigants to understand the reasoning of the District Court's ruling, and contribute to the evolving jurisprudence on the issue.⁵¹ By understanding this value of a written opinion, it becomes apparent why some written opinions are statistically significant and others are not. In other words, all written opinions are not created equal. A written opinion that affirms while explaining the rationale for the affirmance is not what an appellant wants, but at least it allows for an explanation of the issues raised in the appeal and affords the appellant additional basis for appellate review, should the appellate court rely on overruled or outdated precedent.⁵² The American Bar Association's *Standards of Judicial Administration* recommends that "[e]very decision should be supported, at minimum, by a citation of the authority or statement of grounds upon which it is based."⁵³ Supreme Court Justice Clarence Thomas has echoed this idea when stating his philosophy about writing opinions for the Court, noting that

we're obligated to show . . . those who are not there, to say to them: here's the way I think it should be done and here's why. It's not like you cast a vote in the Senate or something like that. You have to explain everything. And you have that wonderful opportunity to do precisely

50. See, e.g., Ezequiel Lugo, *The Conflict PCA: When an Affirmance Without Opinion Conflicts with a Written Opinion*, 85 FLA. BAR J. 46, 46 (Apr. 2011) (noting that "a district court will write an opinion to support an affirmance only if a written explanation would be of 'any significant assistance to the bench or bar of this state'" (citing *Whipple v. State*, 431 So. 2d 1011 (Fla. 2d Dist. Ct. App. 1983)); Arthur J. England, Jr., *PCAs in the DCAs: Asking for Written Opinion From a Court That Has Chosen Not to Write One*, 78 FLA. BAR J. 10, 16 (Mar. 2004) (pointing out that "the district courts have no constitutional responsibility to write an opinion in any given case").

51. *Elliott v. Elliott*, 648 So. 2d 137, 139 (Fla. 4th Dist. Ct. App. 1994) (noting that it is the court's responsibility to decide "which cases merit and warrant a full written opinion upon the basis of that opinion's contribution to the jurisprudence of this State and those cases of great public interest" (quoting *Taylor v. Knight*, 234 So. 2d 156, 157 (Fla. 1st Dist. Ct. App. 1970)).

52. Brannock & Weinzierl, *supra* note 34, at 369, 383.

53. Am. Bar Ass'n, III STANDARDS OF JUDICIAL ADMINISTRATION—STANDARDS RELATING TO APPELLATE COURTS § 3.36(b), 65 (1994).

that. . . . It's really important . . . to explain to people what we're doing and why we're doing it.⁵⁴

Now back to the original question, what a criminal appellant means by the chances-on-appeal question is “Can I get released from prison by the means of my appeal?” The chances of this result are minuscule. However, success on appeal should be widened from this assumption. Success on appeal could be a reversal resulting in a new trial or new sentencing hearing.⁵⁵ But note that even these technically successful appellate outcomes do not mean that there will be any real effect on the convicted criminal. A new trial could result in a second conviction, and a new sentencing hearing could result in the same sentence being imposed after the appeal. In fact, some convicted defendants have been sentenced to more time after “winning” their appeals and gaining re-sentencing hearings,⁵⁶ which is surely not what they had in mind when they asked their lawyers to appeal. To further answer the criminal appellant’s question, then, the decisions must be analyzed for content and “chances on appeal” must be redefined to mean whether the appellate court will issue a written opinion reversing the conviction in a way that substantively results in real relief for the client. And it is to this narrower statistical question that the following analysis provides a rough answer.

III. A STATISTICAL ANALYSIS OF THE CHANCES-ON-APPEAL QUESTION

The processes outlined here are designed to determine what chance any given criminal appellant has of obtaining a written

54. Clarence Thomas, *Conversations with Bill Kristol: Justice Clarence Thomas—Personal Reflections on the Court, His Jurisprudence, and His Education*, FOUND. FOR CONSTITUTIONAL GOV'T (Oct. 22, 2016), <https://www.youtube.com/watch?v=Q3rZknW5gAk> (advance scrubber bar to 27:47–28:10, and then to 32:00–32:13).

55. *E.g.*, Brock v. State, 446 So. 2d 1170, 1170–71 (Fla. 5th Dist. Ct. App. 1984) (involving new trial); Little v. State, 152 So. 3d 770, 772 (Fla. 5th Dist. Ct. App. 2014) (involving new sentencing hearing).

56. *See, e.g.*, Robinson v. State, 108 So. 3d 1150, 1151 (Fla. 5th Dist. Ct. App. 2013) (remanding for sentencing before a different judge). Robinson’s sentence was increased to ten years after remand. *See Inmate Population Information Detail—Robinson, Benjamin R.*, FLA. DEP’T OF CORR. (Dec. 3, 2017), <http://www.dc.state.fl.us/offenderSearch/detail.aspx?Page=Detail&DCNumber=750739&TypeSearch=AI> (providing information about ten-year sentence in *Current Prison Sentence History* table).

opinion reversing the conviction in a way that results in real, substantive relief.⁵⁷ As an additional inquiry, this analysis will quantify to what extent the PCA is relied upon by the Fifth District Court of Appeal to resolve cases. In furtherance of these goals, the following steps were taken.

First, each decision week by the Fifth District Court of Appeal during the year 2016 was reviewed and broken down into categories. To determine whether a case is a criminal case, the style of the case is used. If the State is listed as a party, then the case is criminal. If the State is the appellant, then the case is a State appeal, meaning that the State is seeking to reverse an adverse ruling—a win by the criminal defendant—in the trial court and is the initiator of the appeal. If the State is the second party (the appellee), the case is an individual criminal appeal in which the criminal defendant lost below and is the initiator of the appeal.

Once the criminal cases are broken out from the overall total, the number of direct appeals by criminal defendants can be counted. Each week's decisions were reviewed, totaling the direct criminal PCA's, followed by the total criminal citation opinions.⁵⁸ For the written opinions, each direct criminal case was read to determine if it was an affirmance, in which case the criminal appellant would be afforded no relief.⁵⁹ If the result of the written opinion was a full or partial reversal, the case was further examined for effect on the client. If the writing was a remand for a scrivener's error or minor correction with little or no practical effect on the client's outlook, this case was categorized as a reversal on a technical issue only.⁶⁰ If the effect was substantive or indeterminate as to actual effect on the client, the case was categorized as a written reversal in which a

57. Because the author practices in the Fifth District Court of Appeal, this article is limited to that district, although similar processes could be applied to determine PCA rates and chances on appeal in other districts. Another avenue of future inquiry could be to determine whether the chances on appeal change over time by examining the years before 2016 in the Fifth District Court of Appeal. Inquiring into the chances of convicted defendants in other states' appellate courts could also be useful.

58. See Appendix A, *infra* page 133, at line 5.A.i (showing 1648 individual criminal PCAs), line 4.A (showing 16 criminal citation opinions).

59. See *id.* at line 2.A.ii (showing 50 affirmances).

60. See *id.* at line 2.A.i.b (showing 18 technical-issue reversals).

substantive issue was addressed. This is the line item that would be defined for the purposes of this paper as a “success.”⁶¹

A. Results

For the year 2016, the chances for a criminal appellant in the Fifth District Court of Appeal⁶² are as follows:

- Chances of a successful written decision for a criminal appellant: three percent; and
- Chances of a PCA for a criminal appellant: ninety-five percent.

For comparison purposes, the following statistics could also be derived:

- Number of state criminal appeals: forty-six;
- Number of state appeals resulting in a PCA: twenty; and
- Chances of a PCA for a state criminal appeal: forty-three percent.

Note that when the Fifth District Court of Appeal chose to write an opinion on a State appeal, the result was a 100 percent reversal rate in 2016. This means that the State had a fifty-seven percent chance of success on appeal in a criminal case in 2016. This compares to criminal appellants, who, in those cases in which a written opinion was rendered, obtained reversals on substantive issues only forty-five percent of the time.

The non-criminal cases can also be examined for PCA rate, although chances on success are not analogous to those in a criminal situation, since generally both parties are private in a

61. *See id.* at line 2.A.i.a (showing 54 substantive-issue reversals).

62. It is probable that the likelihood of success on appeal (defined as a written reversal on a significant issue) will vary depending on the district in which a defendant is sentenced. Similarly, the chances of a PCA probably will vary depending on the district, but this study has been limited to the Fifth District.

civil case. Those chances of success can be expressed as follows:

- Number of civil appeals: 773;
- Chance of a PCA: sixty-four percent; and
- Chance of a written opinion: thirty-two percent.

B. Analysis

In the Fifth District Court of Appeal, there were 1794 direct criminal appeals. Of those, 1704 (ninety-five percent) were resolved by PCA. Of the remaining ninety direct criminal appeals, sixteen were citation-only affirmances; eighteen were written reversals addressing a technical error that had no meaning to the client; and fifty-four (three percent) resulted in a written opinion reversing on a substantive issue. Note that these fifty-four cases represent only the maximum possible number of criminal appellants who obtained some sort of actual relief. Note too that this does not mean that the criminal appellant was released in each of these fifty-four cases, only that those appellants received some sort of procedural relief such as a re-sentencing hearing, or perhaps a new trial.

These fifty-four cases can be broken down into eight general categories of reversal, based on the outcome for the criminal appellant:

- re-sentencing;
- interim release from custody;
- reduction in charge;
- reduction in restitution,
- reversal, but other charges present;
- new hearing ordered;
- new trial ordered; and

- successful reversal of conviction.

Explaining each in turn: the category “re-sentencing” generally allows the appellant to reargue for sentencing mitigation. In practice, criminal appellants rarely achieve meaningful sentence reduction on remand, and can sometimes actually receive a harsher sentence. Further, minimum-mandatory-sentencing statutes will still apply on remand, resulting in the imposition of similar sentences after remand.

The category “interim release from custody” results in an immediate benefit in that the appellant is immediately released from custody, but the ultimate sentence has yet to be imposed. This occurs most often in the juvenile context, because a juvenile may not be held after arrest beyond a set statutory period.⁶³

The category “reduction in charge” can be of real benefit to an appellant, or may have no effect at all. This depends on the sentence ultimately imposed by the trial court. For example, if a court sentences a person to three years in prison on a second-degree felony, and that second-degree felony is reduced to a third-degree felony, the three-year sentence may still be imposed on remand. On the other hand, using the same example, if a fifteen-year sentence was originally imposed, the trial court could re-sentence the appellant only to a maximum of five years on remand, a substantial benefit.⁶⁴

The category “reduction in restitution” means that the conviction and sentence were upheld, but that the restitution ordered by the trial court was reduced or eliminated. Depending on the charge, situation, or amount, this can be either insignificant or of major importance to the client.

The category “reversal, but other charges present” arises when a particular charge is struck, but other charges remain.

63. FLA. STAT. § 985.115(1) (2017) (providing that “[a] child taken into custody shall be released from custody as soon as is reasonably possible”). Other parts of this statute set out a series of procedures and safeguards relevant to the treatment of children in custody. *See generally* FLA. STAT. § 985.115.

64. *Compare* FLA. STAT. § 775.082(d) (2017) (indicating that mandatory minimum under state sentencing scheme “[f]or a felony of the second degree” is “a term of imprisonment not exceeding 15 years”) *with* FLA. STAT. § 775.082(e) (indicating that mandatory minimum under state sentencing scheme “[f]or a felony of the third degree” is “a term of imprisonment not exceeding 5 years”); *see also* Leduc v. State, 803 So. 2d 898, 898 (Fla. 5th Dist. Ct. App. 2002) (explaining operation of mandatory-minimum statute).

This would have an effect on an appellant's overall sentence only if the struck charge is the longest charge, or if the sentence on the struck charge was ordered to run consecutively with any other sentences imposed by the trial court. Usually, this is not the case and so the appellate reversal is meaningless to the criminal appellant.

The category "new hearing ordered" means that the case is reversed back to the point at which the appellant was denied due process, by, for example, being sentenced without a hearing. This ruling can be significant if the new process results in a new trial. However, often the lower courts will simply deny the same issue after hearing, resulting in the new hearing's producing no real benefit to the appellant.

The category "new trial ordered" is a significant victory, but only places the criminal appellant back into a position of jeopardy. It allows the State to continue to prosecute the underlying charge, but requires the State to proceed through a new trial in order to reach a new sentencing.

The final category, "successful reversal of conviction," is the most significant to the criminal appellant. An appellate court's complete reversal of a conviction represents the ideal result for a client who seeks an appeal. It is the category of victory on appeal that comes closest to what most members of the public think of when they hear that a sentence was "overturned on appeal."

A statistical breakdown of the frequency of these possible results during 2016 produces the following numbers:

- Re-sentencing: four;
- Interim release from custody: four;
- Reduction in charge: five;
- Reduction in restitution: one;
- Reversal, but other charges present: twelve;
- New hearing ordered: eleven;
- New trial ordered: five; and

- Successful reversal of conviction: twelve.

Applying this breakdown to the question about an individual defendant's chances on appeal, and defining success as a result achieved in only the last category (successful reversal of conviction), results in twelve successes out of 1794 criminal appeals, or a 0.6 percent success rate. Therefore, the general answer to the chances-on-appeal question—if the criminal appellant's fate can be assessed using the 2016 opinions of the Fifth District Court of Appeal as a guide—is just over one-half percent.⁶⁵

IV. CONCLUSION

Most criminal appellants will not receive written explanations from the Fifth District Court of Appeal in their direct appeals. Instead, the most common disposition for a criminal appellant will be a PCA. The question of what actual PCA rate for criminal defendants should be is a public policy question that must be answered by the individual judges on the district courts of appeal and the policy-making bodies that determine the requirements for the use of written opinions.⁶⁶ It is beyond the scope of this essay, which is intended only to lay out what the current statistics indicate about the odds facing the criminal appellant in the Fifth District Court of Appeal.

65. See Appendix A at A(i)(a) (showing that of 1794 criminal appeals, only 54 were substantive reversals); see also Appendix B (showing that only 12 individual criminal appeals were reversed for new trial).

66. The last review of the PCA in Florida was conducted approximately seventeen years ago. Florida Judicial Management Council Committee on Per Curiam Affirmed Decisions, *Final Report and Recommendations*, 47, 53–54 (May 2000) (discussing then-widespread criticism of PCA practice), available at <http://www.flcourts.org/core/fileparse.php/260/urlt/pca-report.pdf>.

APPENDIX A

Statistics: Fifth District Court of Appeal 2016

1. Decisions: 2372

A. Written Opinions: 495

2. Criminal Decisions: 1794

A. Criminal Written Opinions (Individual Appellant): 219

i. Resulting in Reversal: 72

a. Addressing Substantive Issue: 54⁶⁷

b. Addressing Technical Issue Only: 18

ii. Resulting in Affirmance: 50

iii. Belated Appeals Granted or Denied: 65

iv. Post-Conviction Motion Appeals Granted or Denied: 131

B. Criminal Written Opinions (State Appellant): 26

i. Resulting in reversal: 26

ii. Resulting in affirmance: 0

3. Non-Criminal Written Opinions: 250

4. Citation Opinions: 43

A. Total Criminal Citation Opinions: 16

B. Total Civil Citation Opinions: 27

5. PCAs: 2200

A. Criminal: 1704

i. Individual Appeals: 1648

ii. State appeals: 20

B. Non-Criminal PCAs: 496

67. Appendix B, *infra* page 134, covers these cases in more detail.

APPENDIX B

The cases listed in this Appendix are counted in the Criminal Written Opinions (Individual Appellant) category in Appendix A as written opinions that resulted in reversal when a substantive issue was addressed. The entry for each case includes a summary that categorizes it for purposes of success from the criminal appellant's point of view.

Macintosh v. State (No. 5D15-919)—Re-sentencing.

Remanded for re-sentencing by different judge because trial judge based sentence on uncharged or dismissed offenses.

J.S. v. State (No. 5D16-98)—Interim release from custody.

Granted habeas petition for juvenile appellant's immediate release from detention.

A.P. v. State (No. 5D14-4537)—Reversal.

Reversed and remanded because evidence obtained as a result of invalid police stop should have been suppressed.

Sandhaus v. State (No. 5D14-116)—Reduction in charge.

Reduced conviction from second-degree murder to manslaughter and remanded for re-sentencing.

Russ v. State (Nos. 5D14-1740, 5D14-2655)—Partial reversal.

Reversal of convictions on Counts V through X because dispositive motion to suppress should have been granted. Convictions on Counts I through IV affirmed.

B.J.M. v. State (No. 5D15-1048)—Reduction in charge.

Reversed and remanded for reduction of conviction from first-degree criminal mischief to second-degree criminal mischief because evidence was insufficient to prove that amount of damage was greater than \$200.00.

Stapler v. State (No. 5D13-4384)—Partial reversal.

Reversed conviction on double-jeopardy grounds because solicitation is a lesser included offense in conviction for traveling, and remanded for re-sentencing. (This is a substituted opinion entered after rehearing. See *Stapler v. State*—Reduction in charge, *infra* this page.)

Chandler v. State (No. 5D15-696)—Reversal.

Reversed and remanded with instructions to vacate, finding that the State failed to offer evidence sufficient to withstand motion for judgment of acquittal.

Phelps v. State (No. 5D14-2128)—New hearing.

Reversed and remanded for reconsideration of defendant's motion because trial court abused its discretion in denying appellant's motion to interview alternate juror.

Session v. State (5D15-2321)—Partial reversal.

Reversed trial court's denial of motion for acquittal on possession of cocaine and morphine because only evidence of appellant's constructive possession was proximity, and another person was equally proximate to drugs. (Appellant did not appeal conviction on marijuana-possession count.)

Mora v. State (5D15-319)—Partial reversal.

Vacated convictions on two counts because State conceded that admissible evidence was insufficient to sustain convictions of battery and of lewd or lascivious molestation. (Appellant did not appeal conviction on additional battery count.)

Stapler v. State (No. 5D13-4384)—Reduction in charge.

Struck condition of probation forbidding contact with minors as improperly broad and directed trial court to modify conditions of probation on remand.

Foley v. State (No. 5D15-1995)—New hearing.

Reversed and remanded after state conceded error with directions that trial court hold evidentiary hearing to address merits of motion to suppress.

Leon v. State (No. 5D14-1417)—Partial reversal.

Reversed and remanded for a new trial on one count and re-sentencing on another, when appellant had been convicted of three counts of sexual battery, one count of sexual activity with a child, and two counts of lewd or lascivious molestation.

Davila v. State (No. 5D14-4189)—New hearing.

Reversed and remanded for the trial court to appoint conflict-free counsel and hold an evidentiary hearing on appellant's second motion to withdraw plea.

K.C. v. State (No. 5D16-1415)—Interim release from custody.

Habeas petition granted, order of involuntary in-patient placement vacated, and appellant immediately released from custody.

Nunez v. State (No. 5D15-855)—Re-sentencing.

Vacated sentences and remanded for re-sentencing before a different judge. (Underlying convictions of attempted murder and aggravated battery upheld.)

Halliday v. State (No. 5D15-1803)—Partial reversal.

Reversed conviction on count of lewd and lascivious molestation and remanded for entry of judgment of acquittal on that charge, but affirmed convictions for sexual battery and distributing obscene materials.

Senger v. State (No. 5D13-1961)—Partial reversal.

Affirmed conviction and sentence for traveling count, but reversed conviction and vacated sentence for lesser included offense of solicitation on double-jeopardy grounds.

Davidson v. State (No. 5D15-3594)—New hearing.

Remanded to reconsider timely motion to withdraw plea erroneously treated by trial court as having been filed after notice of appeal.

Lopez v. State (No. 5D15-2119)—New hearing.

Reversed for new hearing with conflict-free counsel because appellant had been improperly denied conflict-free counsel for hearing on motion to withdraw plea.

Johnson v. State (No. 5D16-315)—New hearing.

Remanded for merits determination of whether appellant was entitled to belated appeal of civil commitment.

Laing v. State (No. 5D15-3978)—Reversal.

Reversed conviction for violation of probation and instructed trial court to vacate judgment and sentence.

Chappell v. State (No. 5D15-2761)—Partial reversal.

Reversed conviction for one count of third-degree grand theft, but affirmed convictions for burglary and separate count of third-degree grand theft.

Mosby v. State (No. 5D14-2825)—Reduction in charge.

Reversed sentence for enhanced charge of first-degree felony aggravated battery and remanded for re-sentencing on same charge as second-degree felony.

Pina v. State (No. 5D15-928)—Reversal.

Reversed trial court's order revoking probation on the basis of hearsay evidence and remanded with instructions to reinstate probation.

Acevedo v. State (No. 5D15-931)—Reversal.

Reversed for failure of State to prove offense of loitering and prowling and trial court ordered to reinstate probation.

Walker v. State (No. 5D15-2325)—New trial.

Reversed and remanded for further proceedings because appellant never entered a plea.

Battle v. State (Nos. 5D15-2368, 5D15-2370)—Re-sentencing.

Reversed and remanded for re-sentencing before a different judge because state failed to overcome presumption of vindictiveness relating to trial court's imposition of sentence far longer than that appearing in proposed plea agreement.

Mills v. State (No. 5D14-2814)—Partial reversal.

Reversed convictions and vacated sentences for two convictions on double-jeopardy grounds because two counts were subsumed in a third.

D.J.M. v. State (No. 5D15-4496)—Reduction in restitution.

Reversed and remanded with direction for entry of corrected restitution order limiting defendant's responsibility to amounts detailed in plea agreement.

Richardson v. State (No. 5D15-4131)—New hearing.

Reversed and remanded for evidentiary hearing to make a factual determination as to whether appellant's failure to appear at sentencing was willful.

Davis v. State (No. 5D15-3320)—New hearing.

Reversed and remanded for hearing on final order summarily denying as untimely a motion for return of property.

Bonia v. State (No. 5D15-2492)—New hearing.

Reversed and remanded for hearing on final order summarily denying as untimely a motion for return of property.

Greenwich v. State (No. 5D15-1361)—New trial.

Reversed second-degree murder conviction and remanded case for new trial at which all statements made to police before communicating with defense counsel would be excluded.

Cappello v. State (No. 5D15-1977)—Partial reversal.

Reversed burglary conviction because evidence supported a complete defense, but affirmed conviction on robbery count.

Wagers v. State (No. 5D15-2876)—New trial.

Reversed and remanded for new trial because trial court improperly refused to give requested jury instruction on justifiable use of non-deadly force.

Basaluda v. State (No. 5D16-722)—Reversal.

Vacated sentence on the charge of driving while license suspended and remanded for court to reinstate sentence of time served.

Oliver v. State (No. 5D16-779)—New hearing.

Reversed for new sentencing hearing because trial court failed to appoint, or renew offer of, counsel at earlier re-sentencing hearing.

Page v. State (No. 5D16-1860)—Partial reversal.

Reversed conviction for second-degree murder and remanded for new trial on that count. Separate convictions and sentences for attempted first-degree murder and attempted robbery not affected.

Mathis v. State (No. 5D14-492)—New trial.

Reversed in part and remanded for new trial at which previously excluded evidence could be admitted to show absence of *mens rea*.

Bryant v. State (No. 5D15-3066)—New hearing.

Remanded for merits consideration of motion during new hearing at which appellant would be entitled to conflict-free counsel.

M.J. v. State (No. 5D15-3307)—Reversal.

Reversed finding of direct criminal contempt and remanded with directions to vacate judgment.

Hughes v. State (No. 5D14-4516)—Partial reversal.

Reversed and remanded for trial court to vacate conviction for lesser included offense and to consider re-sentencing; order denying motion to dismiss affirmed.

C.O. v. State (No. 5D16-2844)—Interim release from custody.

Certiorari granted, order directing involuntary placement in secured residential mental-health treatment facility quashed, and case remanded because reports relied on by trial court were stale.

Budhan v. State (No. 5D15-1293)—New trial.

Reversed convictions for attempted voluntary manslaughter and remanded for both new trial on those counts and re-sentencing on convictions for aggravated battery and aggravated assault.

Casais v. State (No. 5D16-1072)—Reversal.

Reversed conviction for uttering forged credit cards because statutory language did not cover appellant's use of altered gift cards; trial court ordered to enter acquittal.

Stough v. State (No. 5D16-1001)—Reversal.

Reversed order finding a sheriff in direct criminal contempt because evidence did not support the court's finding, and remanded with instructions to vacate the order.

M.D.E. v. State (No. 5D16-4150)—Interim release from custody.

Habeas petition granted when trial court ordered appellant to remain in secure detention until trial for a period exceeding the statutorily approved number of days.

Abraham v. State (No. 5D14-3825)—Reduction in charge.

Remand for trial court to amend appellant's sentencing documents to reflect youthful-offender status and indicate that he would be eligible for judicial review after twenty years of incarceration.

Friedson v. State (No. 5D15-3063)—Reversal.

Reversed and remanded with instructions to vacate appellant's conviction due to illegal search.

Kenner v. State (No. 5D16-1192)—Re-sentencing.

Conviction of second-degree murder with firearm affirmed, but remanded for re-sentencing before a different judge because initial sentence might have been based on “irrelevant and impermissible factors.”

Kennedy v. State (No. 5D15-4341)—Reversal.

Reversed revocation of probation for failure to complete DUI course and remanded with instructions to reinstate probation for twenty-seven days to complete DUI course.

Dougherty v. State (No. 5D15-3805)—Reversal.

Conviction for leaving scene of crash involving death remanded for the entry of judgment of acquittal and discharge of appellant because applicable statutory terms had been clarified by recent decision of Florida Supreme Court.

