

Supreme Court of Florida

No. 68,093

OPHELIA REDDEN, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[August 28, 1986]

PER CURIAM.

We grant the petition for review of Redden v. State, 479 So.2d 236 (Fla. 4th DCA 1985), under article V, section 3(b)(4) of the Florida Constitution. The district court incorporated by reference and certified the following question also certified in Jones v. State, 459 So.2d 475 (Fla. 5th DCA 1984), to be of great public importance:

Harris v. State, 438 So.2d 787 (Fla. 1983), recognizes a constitutional right of an accused in a capital case to have the jury instructed as to necessarily lesser included offenses and that the violation of that right constitutes fundamental error, a waiver of which, to be effective, must be made on the record knowingly and intelligently by the accused personally rather than by counsel. Do those charged with non-capital crimes enjoy this constitutional right as well as those charged with capital crimes?

459 So.2d at 476. We answered this question in the negative in Jones v. State, 484 So.2d 577 (Fla. 1986). We, accordingly, approve the decision of the district court on the authority of Jones.

It is so ordered.

MCDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH, SHAW and BARKETT, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court
of Appeal - Certified Great Public Importance

Fourth District - Case No. 85-819

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