

Supreme Court of Florida

No. 68,146

CHARLES FERGUSON, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[October 30, 1986]

BARKETT, J.

We have for review Ferguson v. State, 481 So.2d 924 (Fla. 2d DCA 1985) (on rehearing). In that case, the district court certified the following question as being of great public importance:

IS THE DETERMINATION OF A DEFENDANT AS A HABITUAL
FELONY OFFENDER PURSUANT TO SECTION 775.084 A
SUFFICIENT REASON FOR DEPARTURE FROM THE RECOMMENDED
RANGE OF THE SENTENCING GUIDELINES?

Id. at 925. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

This case is controlled by our decision in Whitehead v. State, No. 67,053 (Fla. Oct. 30, 1986). Accordingly, we answer the certified question in the negative and remand this case to the district court with directions to remand to the trial court for resentencing.

It is so ordered.

McDONALD, C.J., and ADKINS, BOYD, EHRLICH and SHAW, JJ., Concur
OVERTON, J., Dissents

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

Second District - Case No. 85-108

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and Ann N. Radabaugh, Assistant Public Defender, Bartow, Florida,

for Petitioner

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