

Supreme Court of Florida

No. 68,180

RICKY J. PAYNE, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[November 13, 1986]

PER CURIAM.

This is a petition to review Payne v. State, 480 So. 2d 202 (Fla. 1st DCA 1985), in which the district court held that the trial court did not err in considering Payne's habitual offender status as a reason for departure from sentencing guidelines. We find conflict with Whitehead v. State, No. 67,053 (Fla. Oct. 30, 1986).^{*} While we approve Payne's conviction, we remand to the district court with directions to return this cause to the trial court for resentencing consistent with Whitehead.

It is so ordered.

McDONALD, C.J., and ADKINS, BOYD, EHRLICH, SHAW and BARKETT,
JJ., Concur
OVERTON, J., Dissents with an opinion

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

^{*}We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

OVERTON, J., dissenting.

I dissent for the reasons expressed in my dissent in Whitehead v. State, No. 67,053 (Fla. Oct. 30, 1986).

Application for Review of the Decision of the District Court
of Appeal - Direct Conflict of Decisions

First District - Case No. BA-314

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and P. Douglas Brinkmeyer, Assistant Public Defender, Tallahassee,
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