

# Supreme Court of Florida

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No. 68,314

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CARL ELBERT MOSLEY, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

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[AUGUST 21, 1986]

OVERTON, J.

This is a petition to review Mosley v. State, 482 So. 2d 530 (Fla. 1st DCA 1986), in which the district court affirmed Mosley's sentence and certified the following question as being 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?

482 So. 2d at 533. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

In Jones v. State, 484 So. 2d 577 (Fla. 1986), we answered the certified question in the negative. Accordingly, we approve the decision of the district court in this cause.

It is so ordered.

MCDONALD, C.J., and ADKINS, BOYD, 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

First District - Case No. BD-162

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