

Supreme Court of Florida

No. 68,608

ROBERT PAUL PATTERSON, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[October 15, 1987]

PER CURIAM.

This cause is before us on remand from the United States Supreme Court for further consideration in light of Miller v. Florida, 107 S. Ct. 2446 (1987), which held, contrary to our holding in State v. Jackson, 478 So.2d 1054 (Fla. 1985), that the amendments to the sentencing guidelines are not mere procedural changes in the law. The Court found that retrospective application of the revised guidelines disadvantaged Miller, violating the ex post facto clause of article I of the United States Constitution.

The trial court, in the instant case, applied the guidelines in effect at the time of Patterson's offense. The district court found that the trial court departed from the guidelines without meeting the formal departure requirements and without justifying its departure with clear and convincing reasons. The district court affirmed the sentence, however, finding that it was not a departure under the amended guidelines

which would apply on resentencing under Jackson. The court certified the same question certified in Wilkerson v. State, 494 So.2d 210, 210 (Fla. 1986), vacated, 107 S. Ct. 3206 (1987):

WHETHER ALL SENTENCING GUIDELINES AMENDMENTS ARE TO BE CONSIDERED PROCEDURAL IN NATURE SO THAT THE GUIDELINES AS MOST RECENTLY AMENDED SHALL BE APPLIED AT THE TIME OF SENTENCING WITHOUT REGARD TO THE EX POST FACTO DOCTRINE.

Patterson v. State, 486 So.2d 74, 76 n.1 (Fla. 4th DCA 1986).

We approved the result of the district court's opinion, finding that, on the authority of Jackson, we had answered the certified question in the affirmative in Wilkerson. Patterson v. State, 499 So.2d 831 (Fla.), vacated, 107 S. Ct. 3206 (1987). Having reconsidered this matter in light of Miller, we answer the certified question in the negative, disapprove the district court's decision, and remand to the district court for further consideration consistent with this opinion.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, 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. 85-906

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