

Supreme Court of Florida

No. 69,034

STATE OF FLORIDA, Petitioner,

vs.

LARRY TEAGUE, Respondent.

[February 26, 1987]

PER CURIAM.

We accepted jurisdiction over this cause pending our review of Vicknair v. State, 483 So. 2d 896 (Fla. 5th DCA 1986), in which the district court certified the following question as one of great public importance:

Is the determination of a defendant as an habitual offender pursuant to section 775.084, Florida Statutes, a permissible reason to depart from a recommended guideline sentence where the sole factual basis for the habitual offender determination is the defendant's criminal record and current conviction which have already been weighed in arriving at the guideline sentence, or when the factual basis for the habitual offender determination, other than the defendant's criminal record, is not a clear and convincing reason for departure under guideline sentencing criteria?

Id. at 898. We answered Vicknair's question in Whitehead v. State, 498 So. 2d 863 (Fla. 1986). For reasons expressed in Whitehead, we approve Teague v. State, 491 So. 2d 296 (Fla. 5th DCA 1986).

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 - Direct Conflict of Decisions

Fifth District - Case No. 85-1883

Robert A. Butterworth, Jr., Attorney General, and Belle B. Turner,
Assistant Attorney General, Daytona Beach, Florida,

for Petitioner

James B. Gibson, Public Defender, Seventh Judicial Circuit, and
Michael S. Becker, Assistant Public Defender, Daytona Beach,
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for Respondent