

Supreme Court of Florida

No. 69,113
No. 69,156

ROBERT LEE McDOWELL, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

STATE OF FLORIDA, Petitioner,

vs.

ROBERT LEE McDOWELL, Respondent.

[July 9, 1987]

PER CURIAM.

We review McDowell v. State, 491 So.2d 594 (Fla. 5th DCA 1986), to answer the certified question of whether retroactive application of the penalty provisions of section 27.3455, Florida Statutes (1985), violate the ex post facto provisions of the Florida and United States Constitutions. We answer the question affirmatively and approve the district court's decision on this point on the authority of State v. Yost, Nos. 68,949, 69,347, 69,348, and 69,144 (Fla. May 7, 1987).

Petitioner McDowell also raises two additional points, one of which respondent state concedes is meritorious. Inasmuch as the district court neglected to address this apparently meritorious point, we quash the decision below and remand for reconsideration. We decline to address the other point raised and thus approve the district court on this point.

It is so ordered.

McDONALD, C.J., OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, JJ.,
Concur

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

Two Consolidated Applications for Review of the Decision of the
District Court of Appeal - Certified Great Public Importance

Fifth District - Case No. 85-1507

James B. Gibson, Public Defender, and Larry B. Henderson,
Assistant Public Defender, Daytona Beach, Florida,

for Petitioner/Respondent Robert Lee McDowell

Robert A. Butterworth, Attorney General, and Sean Daly,
Assistant Attorney General, Daytona Beach, Florida,

for Respondent/Petitioner State of Florida