

# Supreme Court of Florida

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No. 69,420  
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DAVID E. KING, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[February 26, 1987]

EHRlich, J.

We review King v. State, 494 So.2d 291 (Fla. 2d DCA 1986), in which the district court upheld departure from the presumptive guideline sentence based on King's habitual offender status, under section 775.084, Florida Statutes (1985), and certified the following question as being of great public importance:

IS THE DETERMINATION OF A DEFENDANT AS A  
HABITUAL FELONY OFFENDER PURSUANT TO  
SECTION 775.084 A SUFFICIENT REASON FOR  
DEPARTURE FROM THE RECOMMENDED RANGE OF THE  
SENTENCING GUIDELINES?

Id. at 291. We have jurisdiction. Art. V, § 3(b)(4), Fla.

Const.

In our recent decision Whitehead v. State, 498 So.2d 863 (Fla. 1986), we held that "section 775.084 cannot operate as an alternative to guidelines sentencing . . . . Nor can the habitual offender statute remain viable as a reason for departure . . . ." Slip op at 6.

Accordingly, on the authority of Whitehead, we answer the certified question in the negative and quash the decision below. Because the trial court used the habitual offender statute as its reason to depart from the guidelines in sentencing King, we remand with directions to the district court to return the matter

to the trial court for resentencing in accordance with this opinion.

It is so ordered.

McDONALD, C.J., and OVERTON, 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

Second District - Case No. 85-2542

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