

Supreme Court of Florida

No. 69,807

MICHAEL LIVINGSTON, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[July 16, 1987]

OVERTON, J.

This is a petition to review Livingston v. State, 497 So. 2d 998 (Fla. 5th DCA 1986), concerning the retroactive application of section 27.3455(1), Florida Statutes (1985), which requires that all court costs and court fees shall be paid in full prior to granting a prisoner gain time. The district court certified the following question of great public importance:

Does the application of section 27.3455, Florida Statutes (1985) to crimes committed prior to the effective date of the statute violate the ex post facto provisions of the Constitutions of the United States and of the State of Florida, or does the statute merely effect a procedural change as is permitted under State v. Jackson, 478 So. 2d 1054 (Fla. 1985)?

497 So. 2d at 999. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

In Yost v. State, 489 So. 2d 131 (Fla. 5th DCA 1986), the district court certified the identical question which we rephrased as follows:

Does application of the penalty provisions of section 27.3455, Florida Statutes (1985), to crimes committed prior to the effective date of the statute violate the ex post facto provisions of the Constitutions of the United States and Florida?

State v. Yost, Nos. 68,949, 69,347, 69,348 & 69,144, slip op. at 3 (Fla. May 7, 1987). We held the statute unconstitutional in its application to crimes committed prior to its effective date and answered the rephrased question in the affirmative.

In accordance with our decision in Yost, we approve the decision of the Fifth District Court of Appeal in the instant case.

It is so ordered.

McDONALD, C.J., and 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

Fifth District - Case No. 86-557

James B. Gibson, Public Defender, Seventh Judicial Circuit and
Brynn Newton, Assistant Public Defender, Daytona Beach, Florida,

for Petitioner

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

for Respondent