

Supreme Court of Florida

No. 70,788

STATE OF FLORIDA, Petitioner,

vs.

LEROY STANLEY, Respondent.

[January 28, 1988]

BARKETT, J.

We have for review Stanley v. State, 507 So.2d 1131 (Fla. 5th DCA 1987), which notes express conflict with Mitchell v. State, 458 So.2d 10 (Fla. 1st DCA 1984). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

In Atwaters v. State, No. 69,555 (Fla. Jan. 28, 1988), we recently held that the quantity of drugs involved in a crime cannot be used as a reason to depart from the sentencing guidelines.

Accordingly, we approve the decision of the Fifth District and disapprove Mitchell.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, 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 Direct Conflict of Decisions

Fifth District - Case No. 86-946

Robert A. Butterworth, Attorney General and Pamela D. Cichon,
Assistant Attorney General, Daytona Beach, Florida,

for Petitioner

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

for Respondent