

Supreme Court of Florida

No. 71,078

STATE OF FLORIDA,
Petitioner,

vs.

FREDERICK CHARLES HALL,
Respondent.

[November 17, 1988]

GRIMES, J.

Pursuant to article V, section 3(b)(5) of the Florida Constitution, we review Hall v. State, 511 So.2d 1038 (Fla. 1st DCA 1987), in which the First District Court of Appeal certified to us the following question as an issue of great public importance:

IS APPELLANT PERMITTED TO COLLATERALLY
ATTACK THE LEGALITY OF HIS GUIDELINES
DEPARTURE SENTENCE BY RULE 3.850 MOTION
FOR POST-CONVICTION RELIEF ON THE BASIS
THAT THE SOLE REASON FOR DEPARTURE, HIS
STATUS AS A HABITUAL OFFENDER, ALTHOUGH
VALID UNDER A LOWER APPELLATE COURT
DECISION AT THE TIME IMPOSED, IS INVALID
UNDER A SUBSEQUENTLY ISSUED SUPREME
COURT DECISION ENUNCIATING A DIFFERENT
CONSTRUCTION OF THE SENTENCING STATUTES
AND SENTENCING GUIDELINES RULE?

Id. at 1044.

In McCuiston v. State, No. 70,706 (Fla. Nov. 17, 1988), issued contemporaneously herewith, we disapproved the opinion of the First District Court of Appeal in Hall, predicated as it was on the rationale of our original opinion in Bass v. State, 12 F.L.W. 289 (Fla. June 11, 1987), which was withdrawn on rehearing, 530 So.2d 282 (Fla. 1988). Therefore, we answer the certified question in the negative and quash the opinion below.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT 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

First District - Case No. BQ-408
(Jackson County)

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