

Supreme Court of Florida

No. 71,126

PATRICK JOSEPH MORGANTI, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[April 28, 1988]

BARKETT, J.

We have for review Morganti v. State, 510 So.2d 1182, 1184 (Fla. 4th DCA 1987), which certified the following question of great public importance:

Whether, when the sole reason initially given for departure from the Guidelines was held to be valid by appellate courts at the time of sentencing but is subsequently held invalid by the Supreme Court, the trial court may on remand again depart from the Guidelines, if the new reasons given existed at the time of the original sentencing and are valid reasons for departure.

We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We have answered the question in the negative in Shull v. Dugger, 515 So.2d 748 (Fla. 1987), and today reaffirm that holding. Accordingly, the opinion below is quashed and this cause is remanded for proceedings consistent with Shull. Because no valid reasons remain for the departure sentence in this instance, the district court on remand shall direct that petitioner be sentenced within the guidelines.

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 Great Public Importance

Fourth District - Case No. 87-0312

Richard L. Jorandby, Public Defender and Gary Caldwell, Assistant
Public Defender, Fifteenth Judicial Circuit, West Palm Beach,
Florida,

for Petitioner

Robert A. Butterworth, Attorney General and Lee Rosenthal, Assistant
Attorney General, West Palm Beach, Florida,

for Respondent