

Supreme Court of Florida

No. 71,765

STATE OF FLORIDA, Appellant,

vs.

WILLIE POTTS, JR., Appellee.

[June 2, 1988]

BARCKETT, J.

We have on appeal Potts v. State, No. 4-86-1073 (Fla. 4th DCA 1987), which declared unconstitutional a portion of section 790.07(2), Florida Statutes (1985). Jurisdiction is mandatory. Art. V, § 3(b)(1), Fla. Const.

Having reviewed the entire record in this case, we have determined that the district court's decision below is an eminently correct statement of the law. The state through its criminal process may not penalize someone merely for the status of being under indictment or otherwise accused of a crime, as it has attempted to do here. We therefore approve and adopt the district court's opinion in its entirety as our own. Section 790.07(2), Florida Statutes (1985), is facially unconstitutional to the extent it purports to penalize a person who is under indictment with greater severity than one who is accused of no crime.

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.

An Appeal from the District Court of Appeal - Statutory/
Constitutional Invalidity

Fourth District - Case No. 4-86-1073

Robert A. Butterworth, Attorney General, and Lee Rosenthal
and John W. Tiedemann, Assistant Attorneys General, West Palm
Beach, Florida,

for Appellant

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

for Appellee