

# Supreme Court of Florida

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No. 73,807

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STATE OF FLORIDA, Petitioner,

v.

MODESTO HERNANDEZ, Respondent.

[October 5, 1989]

McDONALD, J.

In Hernandez v. State, 543 So.2d 755, 755 (Fla. 3d DCA 1989), the district court certified the following question as being of great public importance:\*

May the defendant's right to have the trial judge present during the voir dire of prospective jurors be validly waived by his attorney or must the defendant personally waive such right?

We recently answered the same question in State v. Singletary, no. 73,223 (Fla. Aug. 31, 1989). In Singletary we held that

for this case and all those cases preceding this case, it is unnecessary for the defendant to join in his counsel's waiver of the judge's presence during voir dire of prospective jurors. For all those cases in which a jury is selected after this opinion is final the trial judge's presence during voir dire may not be waived.

Id., slip op. at 1. In the instant case Hernandez' attorney and the state's attorney stipulated to the judge's being absent during voir dire. This constituted a valid waiver. Because Hernandez' jury was selected before Singletary became final, we

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\* We have jurisdiction pursuant to art. V, § 3(b)(4), Fla. Const.

quash the district court's decision and remand for further proceedings consistent with this opinion.

It is so ordered.

EHRlich, C.J., and OVERTON, 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

Third District - Case No. 87-2701  
(Dade County)

Robert A. Butterworth, Attorney General and Richard L. Polin,  
Assistant Attorney General, Miami, Florida,

for Petitioner

Bennett H. Brummer, Public Defender and Robert Kalter, Assistant  
Public Defender, Eleventh Judicial Circuit, Miami, Florida,

for Respondent