

Supreme Court of Florida

ORIGINAL

No. 76,475

HERBERT WHIPPLE, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[April 2, 1992]

PER CURIAM.

We have for review State v. Whipple, 15 F.L.W. 1916, 1916 (Fla. 3d DCA July 24, 1990), in which the Third District Court of Appeal certified the following question as one of great public importance:

SHOULD POPE V. STATE BE APPLIED RETROACTIVELY TO SENTENCES IMPOSED PRIOR TO APRIL 26, 1990?

We accept jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution. In Smith v. State, No. 76,235 (Fla. Apr. 2, 1992), we answered this question in the affirmative.

In the instant case, the district court correctly applied Pope retroactively by finding that even though the judge orally stated the reasons for a downward departure, the trial judge failed to provide contemporaneous written reasons. The district court correctly vacated the sentence and remanded the case for resentencing. Accordingly, we uphold the decision below.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, BARKETT, GRIMES, KOGAN and HARDING, 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. 89-2606

(Dade County)

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