

# Supreme Court of Florida

## ORIGINAL

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No. 77,059

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STATE OF FLORIDA,

Petitioner,

vs.

LESTER LEWIS GIBSON,

Respondent.

[September 19, 1991]

PER CURIAM.

We have for review Gibson v. State, 568 So.2d 977 (Fla. 1st DCA 1990), based on express and direct conflict with State v. Smith, 573 So.2d 306 (Fla. 1990). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. The opinion below is quashed, and this cause is remanded for reconsideration in light of Smith. The other issue raised by the parties is beyond the scope of the conflict, and we will not address it here.

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 - Direct Conflict of Decisions

First District - Case No. 89-158

(Leon County)

Robert A. Butterworth, Attorney General; and James W. Rogers,  
Bureau Chief-Criminal Appeals, and Carolyn J. Mosley, Assistant  
Attorney General, Tallahassee, Florida,

for Petitioner

Nancy A. Daniels, Public Defender, Second Judicial Circuit,  
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