

# Supreme Court of Florida

## ORIGINAL

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No. 77,134  
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STATE OF FLORIDA

Petitioner,

vs.

RAFAEL FONSECA,

Respondent.

[April 2, 1992]

PER CURIAM.

We have for review Fonseca v. State, 570 So.2d 424, 425 (Fla. 3d DCA 1990), which certified the same question of great public importance answered in Smith v. State, No. 76,235 (Fla. Apr. 2, 1992):

Should Pope v. State[, 561 So.2d 554 (Fla. 1990),] be applied retroactively to sentences imposed prior to April 26, 1990?

We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. As in Smith, the certified question is answered in the affirmative. While we find the district court's conclusions consistent with

our views in Smith, we nevertheless quash the opinion under review and remand for reconsideration in light of Jones v. State, 559 So.2d 204 (Fla. 1990). We do not address the other issues raised by the parties.

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. 89-2541

(Dade County)

Robert A. Butterworth, Attorney General and Charles M. Fahlbusch,  
Assistant Attorney General, Miami, Florida,

for Petitioner

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

for Respondent