

# Supreme Court of Florida

**ORIGINAL**

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No. 77,321

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JAMES ODELL ALLEN, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[June 4, 1992]

HARDING, J.

We have for review State v. Allen, 573 So.2d 170, 171 (Fla. 2d DCA 1991), in which the Second District Court of Appeal certified the following question to be of great public importance:

HAS THE 1988 AMENDMENT OF SECTION 775.084,  
FLORIDA STATUTES, ALTERED THE SUPREME COURT'S  
RULING IN BROWN, HOLDING THAT THE LEGISLATURE  
INTENDED SENTENCING UNDER SECTION 775.084(4)(A)  
TO BE PERMISSIVE, RATHER THAN MANDATORY, AS  
STATED IN DONALD?

We have jurisdiction pursuant to article V, section 3(b)(4) of  
the Florida Constitution.

James Odell Allen (Allen) was convicted of possession of  
cocaine with intent to sell, while carrying a firearm. The State  
filed notice of intention to seek an enhanced sentence under  
section 775.084, Florida Statutes (1989). The trial court found  
that Allen met the statutory criteria for sentencing as a  
habitual offender under the statute, and sentenced him to forty  
years in state prison, followed by ten years' probation. Id. at  
170-171.

On appeal, the Second District Court of Appeal affirmed  
the conviction but reversed the sentence. The court reasoned  
that under the habitual offender statute a defendant must receive  
the sentence designated in section 775.084(4)(a)1, 2, or 3. As  
applied to Allen, who was sentenced for a first-degree felony,  
the district court determined that Allen must be sentenced to  
life as provided in subsection (4)(a)1 if he is sentenced as a  
habitual offender.

The district court determined that its decision and the  
First District Court of Appeal's decision in Donald v. State, 562  
So.2d 792 (Fla. 1st DCA 1990), review denied, 576 So.2d 291 (Fla.  
1991), were in apparent conflict with this Court's decision in

State v. Brown, 530 So.2d 51 (Fla. 1988). In order to clarify whether the 1988 amendments to the habitual offender statute altered our ruling in Brown, the district court certified the question to this Court.

We find that our recent decision in Burdick v. State, 594 So.2d 267 (Fla. 1992), is controlling in this case. In Burdick, we determined that the 1988 amendments did not alter the operative language in subsections (4)(a) or (4)(b). Consequently, we held that sentencing under sections 775.084(4)(a)1 and 775.084(4)(b)1 is permissive, not mandatory. Id. at 271. Based upon Burdick, we answer the certified question in this case in the negative.<sup>1</sup>

Accordingly, we quash the decision below and remand this cause for reinstatement of the sentence imposed by the trial court.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, BARKETT, GRIMES and KOGAN, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

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<sup>1</sup> We reject Allen's equal protection claim because we hold that sentencing is permissive for both habitual felony offenders and habitual violent felony offenders.

Application for Review of the Decision of the District Court of  
Appeal - Certified Great Public Importance

Second District - Case No. 90-01092

(Polk County)

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Assistant Public Defender, Tenth Judicial Circuit, Bartow,  
Florida,

for Petitioner

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