

Supreme Court of Florida

COPY

No. 77,819

STATE OF FLORIDA, Petitioner,

vs.

ANDREW E. JOHNSON, Respondent.

[February 20, 1992]

OVERTON, J.

The State of Florida petitions this Court to review Johnson v. State, 578 So. 2d 435 (Fla. 1st DCA 1991), in which the First District Court of Appeal vacated Johnson's sentencing as a habitual offender and the trial court's departure from the sentencing guidelines in sentencing Johnson for parole violations. The district court certified the following question as being of great public importance:

WHETHER SECTION 775.084(1)(a)1, FLORIDA STATUTES (SUPP. 1988), WHICH DEFINES HABITUAL FELONY OFFENDERS AS THOSE WHO HAVE "PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES," REQUIRES THAT EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION FOR THE IMMEDIATELY PREVIOUS OFFENSE.

Id. at 436.¹

We answered this same certified question in the negative in our decision in State v. Barnes, No. 77,751 (Fla. Feb. 20, 1992). Accordingly, we quash the portion of the district court's decision vacating Johnson's sentencing as a habitual offender and approve the portion vacating the trial court's departure sentence. We remand this case for further proceedings consistent with our opinion in Barnes.

It is so ordered.

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

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

¹ We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

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

First District - Case No. 90-62

(Alachua County)

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