

Supreme Court of Florida

ORIGINAL

No. 78,294

JOSEPH BAXTER, Petitioner,

vs.

GAVIN K. LETTS, etc., et al.,
Respondents.

[February 6, 1992]

PER CURIAM.

Petitioner, Joseph Baxter, seeks relief by either a writ of mandamus or habeas corpus. We treat the petition as a petition for habeas corpus and have jurisdiction pursuant to article V, section 3(b)(9), of the Florida Constitution. Baxter seeks relief from the Fourth District Court of Appeal's decision in State v. Baxter, 581 So. 2d 937 (Fla. 4th DCA 1991), in which the district court reversed his downward-departure sentence in an

appeal by the State. The district court's decision resulted in an increase of three years' incarceration for Baxter. Baxter seeks habeas corpus relief on the grounds that he was not represented in the State's appeal to the Fourth District, that he was indigent, that he was incarcerated, and that he was without actual notice of the State's appeal. The notice of appeal was sent to Baxter's trial counsel, who did not represent him in the appeal.

Baxter has a constitutional right to counsel in the State's appeal to the district court. Douglas v. California, 372 U.S. 353 (1963); Hooks v. State, 253 So. 2d 424 (Fla. 1971), cert. denied, 405 U.S. 1044 (1972); McDaniel v. State, 219 So. 2d 421 (Fla. 1969). Accordingly, we vacate the district court's decision, and direct that the district court proceed anew with the State's appeal once Baxter is properly represented by counsel.

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.

Original Proceeding - Habeas Corpus

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Public Defender, Chief, Appellate Division, West Palm Beach,
Florida,

for Petitioner

Robert A. Butterworth, Attorney General and Melynda L. Melear,
Assistant Attorney General, West Palm Beach, Florida,

for Respondents