

Supreme Court of Florida

No. 78,320

ORIGINAL

ANTHONY ODELL MCLENDON, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[July 2, 1992]

PER CURIAM.

We have for review McLendon v. State, 581 So.2d 254, 255 (Fla. 2d DCA 1991), in which the district court of appeal certified the following question as one of great public importance:

IN SENTENCING FOR A FELONY WHERE THERE IS A CONTEMPORANEOUS CONVICTION OF AN UNSCORED CAPITAL FELONY, IS IT PROPER TO DEPART BASED ON THE DEFENDANT'S CAPITAL CONVICTION WHEN THE APPLICABLE GUIDELINES PROVIDE THAT VICTIM INJURY IS SCOREABLE?

We have jurisdiction based on article V, section 3(b)(4), Florida Constitution. We answered this same question in the affirmative in Bunney v. State, No. 78,141 (Fla. July 2, 1992). Accordingly, we approve the decision below.

It is so ordered.

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

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

Second District - Case No. 89-00156

(Hillsborough County)

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