

Supreme Court of Florida

ORIGINAL

No. 78,728

STATE OF FLORIDA, Petitioner,

vs.

DENNIS WAYNE THOMPSON, Respondent.

[November 12, 1992]

OVERTON, J.

This is a petition to review Thompson v. State, 585 So. 2d 49% (Fla. 5th DCA 1991), in which the Fifth District, Court of Appeal held that Thompson cannot be sentenced for both the sale of a counterfeit controlled substance and for felony petit theft when both offenses are based on the same conduct. The district court certified the following question as one of great public importance:

CAN A DEFENDANT BE PROPERLY CONVICTED OF BOTH
FRAUDULENT SALE OF A COUNTERFEIT CONTROLLED
SUBSTANCE AND FELONY PETIT THEFT WHERE BOTH
CHARGES AROSE FROM THE SAME FRAUDULENT SALE?

Id. at 495. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We answer the certified question in the negative and approve in full the district court decision, finding that it is consistent with our decision in Houser v. State, 474 So. 2d 1193 (Fla. 1985). We find that State v. Bussey, 463 So. 2d 1141 (Fla. 1985), is not applicable under the circumstances of this case and agree with the district court that this is a theft crime. We adopt the opinion of the district court as the opinion of this Court.

It is so ordered.

BARKETT, C.J., and McDONALD, SHAW, 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

Fifth District - Case No. 90-2074

(Seminole County)

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