

Supreme Court of Florida

ORIGINAL

No. 78,876

JERRY RAY ROBINS, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[July 2, 1992]

OVERTON, J.

We have for review Robins v. State, 587 So. 2d 581 (Fla. 1st DCA 1991), in which the district court affirmed the reclassification of Robins' kidnapping conviction to a life felony based on his codefendant's wielding of a gun during the commission of the crime.¹ We recently held in State v.

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

Rodriguez, No. 77,859 (Fla. July 2, 1992), that actual physical possession of a weapon during the commission of a crime is required for the offense to be reclassified under section 775.087(1), Florida Statutes (1983). Accordingly, we quash the decision of the district court and remand for further proceedings consistent with Rodriguez.

It is so ordered.

BARRETT, 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 - Direct Conflict of Decisions

First District - Case No. 90-3115

(Duval County)

Nancy A. Daniels, Public Defender and Abel Gomez, Assistant
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for Petitioner

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for Respondent