

Supreme Court of Florida

ORIGINAL

No. 79,728

STATE OF FLORIDA, Petitioner,

vs.

HILLY JOE HODGES, Respondent.

[April 15, 1993]

SHAW, J.

We have for review Hodges v. State, 596 So. 2d 481 (Fla. 1st DCA 1992), wherein the district court certified a question of great public importance. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We have since answered the question in

State v. Rucker, 18 Fla. L. Weekly 593 (Fla. Feb. 4, 1993).¹ We quash Hodges and remand for proceedings consistent with Rucker.

It is so ordered.

BARRETT, C. J., and OVERTON, McDONALD, GRIMES, KOGAN and HARDING, JJ., concur.

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

¹ We decline to address the second certified question in Hodges dealing with the constitutionality of the habitual offender statute. In his brief before this Court on this issue, Hodges argues exclusively, and for the first time, that the statute is unconstitutional as applied, primarily on racial grounds. Such a challenge requiring resolution of extensive factual matters cannot be raised for the first time on appeal. Trushin v. State, 425 So. 2d 1126 (Fla. 1982).

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

First District - Case No. 91-1569

(Duval County)

Robert A. Butterworth, Attorney General; James W. Rogers, Senior
Assistant Attorney General, Bureau Chief-Criminal Appeal, and
Edward C. Hill, Jr., Assistant Attorney General, Tallahassee,
Florida,

for Petitioner

Nancy A. Daniels, Public Defender; and Carol Ann Turner,
Assistant Public Defender, Tallahassee, Florida,

for Respondent