

Supreme Court of Florida

ORIGINAL

No. 80,036

DERRICK ACKERS, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[May 20, 1993]

PER CURIAM.

We review Ackers v. State, 601 So. 2d 567 (Fla. 5th DCA 1992)(on rehearing), on the ground of express and direct conflict. Art. V, § 3(b)(3), Fla. Const.

We recently held that it is permissible to impose probation upon a defendant found to be an habitual felony offender. McKnight v. State, 18 Fla. L. Weekly S191 (Fla. Mar. 25, 1993). We therefore quash that part of the district court's

decision that ruled to the contrary. Our decision does not affect the remaining components of the district court's opinion. We remand this case for further proceedings consistent with this opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, 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

Fifth District - Case No. 91-1364

(Orange County)

James B. Gibson, Public Defender; and Paolo G. Annino and Anne
Moorman Reeves, Assistant Public Defenders, Seventh Judicial
Circuit, Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney General and Nancy Ryan, Assistant
Public Defender, Daytona Beach, Florida,

for Respondent