

Supreme Court of Florida

No. 64,407

TERESA R. GROWDEN, also
known as CHERYL LYNN POWELL,
Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[February 7, 1985]

BOYD, C.J.

This cause is before the Court on petition for review of the decision of the district court of appeal in State v. Growden, 437 So.2d 783 (Fla. 2d DCA 1983). The district court, in deciding the state's appeal from an order dismissing a criminal charge, held a state statute valid against a constitutional challenge, thus giving this Court jurisdiction to review the decision. Art. V, § 3(b)(3), Fla. Const. We approve the decision of the district court of appeal.

The question presented is whether section 817.563, Florida Statutes (1981), is constitutional. The statute makes it unlawful to agree, consent, or offer to sell a controlled substance and then in lieu thereof to sell a substance other than a controlled substance. The statute is assailed on both substantive and procedural due process grounds. It is argued that the statute fails to contain a required intent element; that it is vague; that it improperly burdens the defendant with proving his innocence, and that it bears no reasonable relationship to a legitimate state objective.

We reject all of these arguments and declare section 817.563 to be constitutional. See State v. Bussey, Nos. 64,966, 64,967 & 64,968 (Fla. Feb. 7, 1985).

The decision of the district court of appeal is approved.

It is so ordered.

OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., Concur
ADKINS, 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 - Statutory Validity

Second District - Case No. 82-2234

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for Petitioner

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for Respondent