

Supreme Court of Florida

No. 65,495

STATE OF FLORIDA, Petitioner,

v.

CARL LEE HICKS, Respondent.

[May 23, 1985]

McDONALD, J.

We accepted jurisdiction of Hicks v. State, 452 So.2d 606 (Fla. 4th DCA 1984), because of conflict with Sanderson v. State, 447 So.2d 374 (Fla. 1st DCA 1984). We have jurisdiction pursuant to article V, section 3(b)(3), Florida Constitution, and we approve Hicks.

The issue in this case is whether a person subject to probation revocation has an absolute right to counsel in such a proceeding, and, if so, whether the right must be afforded him before he is required to admit or deny the revocation charges. We hold that unless there has been an informed waiver thereof such a person is entitled to counsel, and it must be afforded him before he is required to respond in any manner to the revocation charges.

We note at the outset that there is no constitutional requirement for the appointment of counsel in all probation revocation hearings. Gagnon v. Scarpelli, 411 U.S. 778 (1973). We predicate our decision here on the ground that a uniform rule in all probation revocation hearings is more easily understood and easier to administer than requiring attorneys in some cases but not in others. We do not believe that a uniform requirement will unduly tax the resources of the public defender system; we

believe it will result in a more orderly and uniform administration of the criminal justice system.* Judge Downey, writing for the district court, has cogently stated reasons to adopt the ruling we make. We doubt that we could improve upon his opinion and therefore adopt it as the opinion of this Court.

The opinion of the district court of appeal is approved.

It is so ordered.

BOYD, C.J., OVERTON, EHRLICH and SHAW, JJ., Concur
ADKINS and ALDERMAN, JJ., Dissent

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

* Further, a probation revocation usually leads to sentencing; an attorney is required at a sentencing proceeding. It seems illogical not to mandate an attorney when revocation is likely to lead to incarceration and to require an attorney only when the length of that incarceration is being decided.

Application for Review of the Decision of the District Court
of Appeal - Direct Conflict of Decisions

Fourth District -- Case No. 83-684

Jim Smith, Attorney General and Carolyn V. McCann, Assistant
Attorney General, West Palm Beach, Florida,

for Petitioner

Richard L. Jorandby, Public Defender and Margaret Good, Assistant
Public Defender, Fifteenth Judicial Circuit, West Palm Beach,
Florida,

for Respondent