

Supreme Court of Florida

No. 66,081

STATE OF FLORIDA, Petitioner,

vs.

ROBERT GENE DAVIS, Respondent.

[October 17, 1985]

OVERTON, J.

This is a petition to review Davis v. State, 458 So. 2d 42 (Fla. 4th DCA 1984), remanding respondent's case for resentencing because the trial court used both permissible and impermissible reasons to depart from the sentencing guidelines. The district court certified the following question as a matter of great public importance:

If the scoresheets make provision for prior convictions, can those convictions also constitute clear and convincing reasons for aggravated punishment outside the guidelines?

Id. at 44. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered that question in Hendrix v. State, No. 65,928 (Fla. Aug. 29, 1985), in which we held that, since prior convictions are already factored in as a part of the presumptive guidelines sentence, they may not be used as a clear and convincing reason for departure. See also Deer v. State, No. 66,532 (Fla. Aug. 29, 1985); Gregory v. State, No. 66,317 (Fla. Aug. 29, 1985).

Accordingly, we approve the decision of the district court.

It is so ordered.

BOYD, C.J., and ADKINS, McDONALD, EHRLICH and SHAW, 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 - Certified Great Public Importance

Fourth District - Case Nos. 84-87, 84-164, and 84-383

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