

# Supreme Court of Florida

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No. 66,212  
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STATE OF FLORIDA, Petitioner, Cross-Respondent,

vs.

WILLIAM FOREMAN, Respondent, Cross-Petitioner.

[September 26, 1985]

EHRlich, J.

We took jurisdiction in this case to answer a question certified to be of great public importance in Foreman v. State, 458 So.2d 1213 (Fla. 2d DCA 1984). Art. V, § 3(b)(5), Fla. Const.

The question certified is:

MAY A DEFENDANT BE CONVICTED AND SENTENCED FOR BOTH SEXUAL BATTERY AND FIRST DEGREE BURGLARY PUNISHABLE BY LIFE (WHICH IS ENHANCED FROM BURGLARY TO FIRST DEGREE BURGLARY PUNISHABLE BY LIFE BY REASON OF THE COMMISSION OF ASSAULT OR BATTERY IN THE COURSE OF THE BURGLARY) WHEN THE SEXUAL BATTERY IS THE SAME CONDUCT ON THE BASIS OF WHICH THE BURGLARY CHARGE IS SO ENHANCED?

On the authority of Wicker v. State, 462 So.2d 461 (Fla. 1985), we answer the question in the affirmative and quash the decision of the district court. We remand for further proceedings in accord with this opinion.

It is so ordered.

BOYD, C.J., and ADKINS, McDONALD and SHAW, JJ., Concur  
OVERTON, J., Dissents

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

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

Second District - Case No. 84-255

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