

Supreme Court of Florida

No. 66,317

JAMES CLARIN GREGORY, Petitioner,

v.

STATE OF FLORIDA, Respondent.

[August 29, 1985]

PER CURIAM.

We have for review Gregory v. State, 458 So.2d 792 (Fla. 5th DCA 1984), which conflicts with decisions of other district courts of appeal and of this Court. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

The Fifth District Court of Appeal affirmed the decision of the trial court on the authority of Hendrix v. State, 455 So.2d 449 (Fla. 5th DCA 1984).

In Hendrix the Fifth District Court of Appeal held that a trial judge may base a decision to depart from the sentencing guidelines on a defendant's prior criminal record, even where that same factor has been taken into account in determining the presumptive guidelines sentence. We quashed that decision in Hendrix v. State, No. 65,928 (Fla. Aug. 29, 1985).

For the same reasons, we likewise quash the decision of the Fifth District Court of Appeal and remand with directions to further remand to the trial court for sentencing in accordance with the guidelines.

It is so ordered.

BOYD, C.J., OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., Concur
ADKINS, J., Dissents with an opinion

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

ADKINS, J., dissenting.

I dissent for the same reasons which I expressed in Hendrix v. State, No. 65,928 (Fla. Aug. 29, 1985).

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

Fifth District - Case No. 84-201

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