Supreme Court of Florida

No. 66,428

STATE OF FLORIDA, Petitioner,

v.

JOSEPH CURTIS SMITH, Respondent.

[March 6, 1986]

ADKINS J.

We accepted for review the decision in <u>Smith v. State</u>, No. 84-326 (Fla. 4th DCA Dec. 28, 1984), to determine the following issue: Whether the state may attempt to establish the element of intent in a burglary prosecution by use of the presumption of intent statute section 810.07, Florida Statutes, where the charging document alleged that the defendant entered with the intent to commit a specified offense.

We determined this issue in <u>L. S. v. State</u>, 464 So.2d 1195 (Fla. 1985).

On May 29, 1985, the Fourth District Court of Appeal granted the state's motion for stay of mandate and based on this Court's opinion in <u>L.S. v. State</u> withdrew the opinion filed in the instant case in <u>Smith v. State</u>, and affirmed the judgment of the trial court.

Upon motion of the state, this cause is dismissed.

It is so ordered.

BOYD, C.J., and OVERTON, 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 - Direct Conflict of Decision

Fourth District - Case No. 84-326

Jim Smith, Attorney General; and Georgina Jimenez-Orosa and Marlyn J. Altman, Assistant Attorneys General, West Palm Beach, Florida,

for Petitioner

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

for Respondent