

Supreme Court of Florida

No. 66,624

JAMES ARTHUR BRINSON, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[August 30, 1985]

PER CURIAM.

This is a petition to review Brinson v. State, 463 So.2d 564, 564 (Fla. 2d DCA 1985), in which the district court certified the following as a question of great public importance:

When an appellate court finds that a sentencing court relied upon a reason or reasons that are impermissible under Florida Rule of Criminal Procedure 3.701 in making its decision to depart from the sentencing guidelines, should the appellate court examine the other reasons given by the sentencing court to determine if those reasons justify a departure from the guidelines or should the case be remanded for a resentencing?

We have jurisdiction under article V, section 3(b)(4) of the Florida Constitution. We recently answered the identical question in State v. Young, No. 66,257 (Fla. Aug. 29, 1985): "When a departure sentence is grounded on both permissible and impermissible reasons, the sentence should be reversed and the case remanded for resentencing unless the state is able to show beyond a reasonable doubt that the absence of the impermissible reason(s) would not have affected the departure sentence." Slip op. at 1. See also Albritton v. State, No. 66,169 (Fla. Aug. 29, 1985).

In the present case the district court affirmed the trial court despite finding two "questionable" reasons for departure among seven. We cannot determine the standard applied and therefore quash the decision and remand to the district court for reconsideration in light of Young.

It is so ordered.

BOYD, C.J., OVERTON, McDONALD, EHRLICH and SHAW, JJ., Concur
ADKINS, J., Concur in result only

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

Second District - Case No. 84-1837

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for Petitioner

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