

Supreme Court of Florida

No. 66,921

RONNIE D. BROWN, Petitioner,

v.

STATE OF FLORIDA, Respondent.

[May 8, 1986]

McDONALD, J.

We accepted jurisdiction to answer a certified question of the district court of appeal in this case. Brown v. State, 464 So.2d 193 (Fla. 1st DCA 1985). The court posed the following question:

WHETHER A DEFENDANT'S CONSTITUTIONAL RIGHT OF PROTECTION AGAINST EX POST FACTO LAWS IS VIOLATED, WHEN HE AFFIRMATIVELY SELECTS, PURSUANT TO SECTION 921.001(4)(a), FLORIDA STATUTES (1983), TO BE SENTENCED PURSUANT TO THE GUIDELINES BUT THERE IS NO SHOWING IN THE RECORD THAT THE COURT EXPLAINED THAT BY SELECTING GUIDELINES SENTENCING THE DEFENDANT WAIVES HIS ELIGIBILITY FOR PAROLE.

Id. at 194. We answered a similar question in the negative in Cochran v. State, 476 So.2d 207 (Fla. 1985), and held that an affirmative selection to be sentenced under the guidelines is all that is required.

Brown asks us to review other portions of the district court's opinion, particularly in view of our decision in Albritton v. State, 476 So.2d 158 (Fla. 1985). We decline to do so, although a few words are in order on one of these issues. The district court found that it should not review the extent of the departure sentence; this is contrary to our holding in Albritton. We, however, have reviewed the record and find that under the facts of this case the trial judge had good grounds for departure and that, although one ground for departure is questionable, it

is clear beyond a reasonable doubt that the exclusion of that ground would affect neither the judge's determination to depart nor the extent of the departure. We find no abuse of discretion by the trial judge in imposing the sentences in this case. The opinion of the district court is accordingly approved.

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, EHRLICH, SHAW and BARKETT, 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

First District - Case Nos. AY-166 &
AY-466

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