

Supreme Court of Florida

No. 67,093

RANDY VON CARTER, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[November 27, 1985]

OVERTON, J.

This is a petition to review Von Carter v. State, 468 So. 2d 276 (Fla. 1st DCA 1985), in which the district court reversed a trial court sentencing judgment for an improper departure from the sentencing guidelines and certified the following question as a matter 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 departure from the guidelines or should the case be remanded for a resentencing[?]

Id. at 280. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We recently answered the 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 Brinson v. State, No. 66,624 (Fla. Aug. 30, 1985); State v. Carney, No. 66,163 (Fla. Aug. 29, 1985); Albritton v. State, No. 66,169 (Fla. Aug. 29, 1985).

Accordingly, we remand this cause to the district court for reconsideration.

It is so ordered.

BOYD, C.J., and ADKINS, 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 - Certified Great Public Importance

First District - Case No. AW-30

Michael E. Allen, Public Defender and David A. Davis, Assistant
Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Jim Smith, Attorney General and Andrea Smith Hillyer, Assistant
Attorney General, Tallahassee, Florida,

for Respondent