

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 ALPHONSO GRIFFIN,)
)
 Respondent.)
 _____)

CASE NO. 67,713

FILED

SID J. WHITE

OCT 22 1985

CLERK, SUPREME COURT

By *M*
Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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RESPONDENT'S BRIEF ON JURISDICTION

The respondent accepts the Statement of the Case and Facts as presented by the petitioner in its jurisdictional brief.

SUMMARY OF ARGUMENT

The decision of the District Court of Appeal, Fifth District, in ruling that the guidelines in effect at the time of the crime apply to the sentencing, is in accord with the decisions of other district courts of appeal. No direct and express conflict exists since the cases cited by the petitioner do not deal with an increase in the quantum of punishment. Thus, this Court need not exercise its discretionary jurisdiction.

ARGUMENT

NO BASIS EXISTS FOR THIS COURT'S EXERCISE OF ITS DISCRETIONARY JURISDICTION SINCE THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH DECISIONS OF THIS COURT OR OF OTHER DISTRICT COURTS OF APPEAL.

The petitioner alleges that the instant decision in construing the ex post facto doctrine contained in Article I, Section 9 of the United States Constitution and Article I, Section 10 of the Florida Constitution has prohibited the application of sentencing guidelines provisions in effect at the time of sentencing. The actual language of the opinion proscribes retroactive application of an enhanced penalty guideline and remands the case for sentencing in accordance with the guidelines in effect at the time of the offense. The district court's reasoning is sound and this Court should not exercise its discretionary jurisdiction.

The other district courts which have addressed this issue have been in agreement with the Fifth District Court of Appeal. Richardson v. State, 10 FLW 1712 (Fla. 1st DCA July 10, 1985); Beggs v. State, 10 FLW 1729 (Fla. 1st DCA July 16, 1985); Sueriro v. State, 10 FLW 1525 (Fla. 3d DCA July 18, 1985); Miller v. State, 458 So.2d 1018 (Fla. 4th DCA 1985).

The petitioner contends that the instant decision conflicts with May v. Florida Parole and Probation Commission, 435 So.2d 834 (Fla. 1983), and Lee v. State, 294 So.2d 305 (Fla. 1974). These cases, however, do not deal with the same issue, an increase in the quantum of punishment. May, supra, dealt solely with a change in the presumptive parole release date of the appellant, a matter of grace in Florida, not with the length of the actual sentence imposed by the trial court.

Similarly, in Lee v. State, supra, the Court specifically noted that the post-crime amendment did not increase any penalty provision. Here, the amendment in question increased the quantum of punishment.


In that there is no conflict between the decisions of the district courts of appeal on the issue of proper application of the amended guidelines and the interpretation of the ex post facto doctrine as it relates to said application, the respondent respectfully asserts that this Court need not invoke its jurisdiction to review the decision of the Fifth District Court of Appeal.

CONCLUSION

BASED UPON the foregoing cases, authorities, policies, and facts, this Court should decline to exercise its discretionary jurisdiction in this matter.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by mail to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, FL 32014 and Mr. Alphonso Griffin, Inmate No. 095988, P. O. Box 699, Sneads, FL 32460 on this 21st day of October, 1985.



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