

Supreme Court of Florida

No. 68,945

STATE OF FLORIDA, Petitioner,

vs.

PHILLIP LEE MOULTRIE, Respondent.

[February 5, 1987]

EHRlich, J.

We have for review Moultrie v. State, 488 So.2d 558 (Fla. 5th DCA 1986), which expressly and directly conflicts with decisions of other district courts of appeal on the issue of whether habitual offender status, under section 775.084, Florida Statutes (1985), is a valid reason for departure from a presumptive guidelines sentence. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

Consistent with our recent decision in Whitehead v. State, Case No. 67,053 (Fla. Oct. 30, 1986), the district court below held that it is not. Accordingly, on the authority of Whitehead, we approve the decision below.

It is so ordered.

McDONALD, C.J., SHAW and BARKETT, JJ., and ADKINS, J. (Ret.),
Concur
OVERTON, J., Dissents

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 Decisions

Fifth District - Case No. 85-968

Robert A. Butterworth, Jr., Attorney General, and Margene A. Roper,
Assistant Attorney General, Daytona Beach, Florida,

for Petitioner

James B. Gibson, Public Defender, Seventh Judicial Circuit, and
Michael L. O'Neill, Assistant Public Defender, Daytona Beach,
Florida,

for Respondent