

Supreme Court of Florida

CORRECTED OPINION

No. 69,173

CHRISTIAN DANIEL MASSARD, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[March 26, 1987]

BARKETT, J.

We took jurisdiction of Massard v. State, 501 So.2d 1289 (Fla. 4th DCA 1986), because of express and direct conflict with Whitehead v. State, 498 So.2d 863 (Fla. 1986). Art. V, § 3(b)(3), Fla. Const.

The Fourth District, in its opinion below, held that habitual offender status was a sufficient reason to depart from the guidelines. We subsequently held that this is not a permissible reason to depart. Whitehead, 498 So.2d at 867. Since the district court remanded for resentencing and the trial court now has the benefit of our decision in Whitehead, there is no need for our review.

Accordingly, the petition for review is dismissed.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, GRIMES and KOGAN, JJ., Concur

Application for Review of the Decision of the District Court
of Appeal - Direct Conflict of Decisions

Fourth District - Case No. 84-1741

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