

# Supreme Court of Florida

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No. 70,188

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TYRONE E. McDANIEL, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[December 3, 1987]

OVERTON, J.

This is a petition to review State v. McDaniel, 508 So. 2d 371 (Fla. 2d DCA 1987), which relied on State v. McGee, 494 So. 2d 255 (Fla. 2d DCA 1986), in holding that possession with intent to sell any amount of cannabis is a third-degree felony under section 893.13(1)(a)(2), Florida Statutes (1985). In relying on McGee, the district court recognized conflict with Franklin v. State, 346 So. 2d 137 (Fla. 1st DCA 1977).<sup>\*</sup> We recently resolved the conflict by disapproving the district court's decision in Franklin and approving the district court's decision in McGee. McGee v. State, 509 So. 2d 1102 (Fla. 1987). Accordingly, we approve the district court's decision in the instant case.

It is so ordered.

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

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF  
FILED, DETERMINED.

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\* We have jurisdiction pursuant to article V, section 3(b)(3), Florida Constitution.

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

Second District - Case No. 86-1355

James Marion Moorman, Public Defender, Tenth Judicial Circuit,  
and A. N. Radabaugh and John T. Kilcrease Jr., Assistant Public  
Defenders, Bartow, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Charles Corces, Jr.,  
Assistant Attorney General, Tampa, Florida,

for Respondent