

Supreme Court of Florida

No. 71,102

STATE OF FLORIDA, Petitioner,

vs.

THERION FRIERSON, Respondent.

[April 27, 1989]

PER CURIAM.

We accepted review of the Fifth District Court of Appeal's opinion in Frierson v. State, 511 So.2d 1016 (Fla. 5th DCA 1987), because of direct and express conflict with McCuiston v. State, 507 So.2d 1185 (Fla. 2d DCA 1987). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

Upon review of McCuiston, we approved the decision of the second district court in that case, and specifically disapproved the decision of the court below in this case, holding that our decision in Whitehead v. State, 498 So.2d 863 (Fla. 1986), should not be given retrospective application. McCuiston v. State, 534 So.2d 1144 (Fla. 1988). The fifth district court applied Whitehead retrospectively. Accordingly, we quash that opinion and remand this case for proceedings consistent with this opinion and our opinion in McCuiston.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, 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 - Direct Conflict of Decisions

Fifth District - Case No. 86-2201
(Orange County)

Robert A. Butterworth, Attorney General, and Sean Daly, Assistant
Attorney General, Daytona Beach, Florida,

for Petitioner

Therion Frierson, in proper person, Orlando, Florida,

for Respondent