

Supreme Court of Florida

No. 71,568

STATE OF FLORIDA, Petitioner,

vs.

DEAN ROBERT KERSEY, Respondent.

[April 28, 1988]

BARKETT, J.

We review Kersey v. State, 515 So.2d 261 (Fla. 5th DCA 1987), based upon certified conflict with Hall v. State, 511 So.2d 1038 (Fla. 1st DCA 1987), and Hoefert v. State, 509 So.2d 1090 (Fla. 2d DCA 1987). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

The issue presented is whether the habitual offender statute, section 775.084, Florida Statutes (1985), may be used to enhance the statutory maximum sentence. We held in Winters v. State, No. 70,164 (Fla. Feb. 25, 1988), that the habitual offender statute remains viable for this purpose, so long as the sentence imposed is within the guidelines range. Because we resolved this issue contrary to the view of the Fifth District,* we quash the decision below and remand for proceedings consistent with Winters.

It is so ordered.

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

* The Fifth District has since receded from that view. Inscho v. State, 13 F.L.W. 326 (Fla. 5th DCA, Feb. 4, 1988).

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 - Certified Direct Conflict of Decisions

Fifth District - Case No. 87-933

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