

# Supreme Court of Florida

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No. 72,008

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DONALD LEE SMITH, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[September 3, 1988]

EHRlich, C.J.

We have for review Smith v. State, 519 So.2d 731 (Fla. 1st DCA 1988), in which the district court certified the following question:

IN LIGHT OF WILLIAMS V. STATE, 500 SO.2D 501 (FLA. 1986), MAY A TRIAL JUDGE EXCEED THE RECOMMENDED GUIDELINES SENTENCE BASED UPON A LEGITIMATE AND UNCOERCED CONDITION OF A PLEA BARGAIN?

We have jurisdiction. Art. V, § (3)(b)(4), Fla. Const.

Smith entered a negotiated plea of guilty to a charge of second-degree murder in exchange for a twenty-four year sentence, which was in excess of the recommended guidelines sentence. The trial court accepted the plea. The district court below affirmed Smith's departure sentence and certified the question now before this Court.

This Court recently answered the above stated certified question in the affirmative, holding that the plea bargain itself may serve as a clear and convincing reason for departure when the

departure reason was accepted as an integral part of the bargain itself. Quarterman v. State, 527 So.2d 1380 (Fla. 1988). See also Holland v. State, 508 So.2d 5 (Fla. 1987). Accordingly, we approve the result reached by the district court below.

It is so ordered.

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 - Certified Great Public Importance

First District - Case No. BM-412

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