

Supreme Court of Florida

No. 72,998

STATE OF FLORIDA, Petitioner,

vs.

MICHAEL W. GREEN, Respondent.

[March 23, 1989]

BARKETT, J.

We have for review Green v. State, 528 So.2d 1233 (Fla. 1st DCA 1988), based on express and direct conflict with State v. Wells, No. 69,363 (Fla. Mar. 2, 1989) (on rehearing). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. The district court below expressly relied on the holding of Miller v. State, 403 So.2d 1307 (Fla. 1981), superseded by Colorado v. Bertine, 479 U.S. 367 (1987) as recognized in State v. Wells, No. 69,363 (Fla. Mar. 2, 1989) (on rehearing). Accordingly, we quash the opinion below and remand for reconsideration in light of Wells.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, 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

First District - Case No. BT-15
(Bay County)

Robert A. Butterworth, Attorney General and Bradley R. Bischoff,
Assistant Attorney General, Tallahassee, Florida,

for Petitioner

Rhonda S. Martinec of Daniel, Komarek & Martinec, Chartered,
Panama City, Florida,

for Respondent