

# Supreme Court of Florida

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No. 73,295  
\_\_\_\_\_

JUNIOR McPHERSON, Petitioner,

vs .

STATE OF FLORIDA, Respondent.

[September 6, 1990]

BARKETT, J.

We have for review McPherson v. State, 530 So.2d 1029 (Fla. 4th DCA 1988), in which the district court affirmed on authority of State v. Avery, 531 So.2d 182 (Fla. 4th DCA 1988). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. Avery was quashed by Avery v. State, 555 So.2d 351 (Fla. 1989), pursuant to our decision in Bostick v. State, 554 So.2d 1153 (Fla. 1989), petition for cert. filed, No. 89-1717 (U.S. Apr. 26, 1990). Accordingly, we quash the opinion of the district court, and remand for proceedings consistent with Bostick.

It is so ordered.

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

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

Fourth District - Case No. 87-2226

(Palm Beach County)

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Florida,

for Petitioner

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