

Supreme Court of Florida

No. 73,398

AARON HAMILTON,
Petitioner,

vs .

STATE OF FLORIDA,
Respondent.

[August 31, 1989]

PER CURIAM.

We have for review Hamilton v. State, 533 So.2d 926 (Fla. 5th DCA 1988), which conflicts with Lambert v. State, Nos. 71,890, 72,047 (Fla. June 15, 1989). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We quash the decision of the district court.

Hamilton was convicted of committing several drug offenses and was placed on community control. Following his arrest for barn-burning, the court revoked his community control and, departing from the guidelines range of two-and-one-half to three-and-one-half years, sentenced him to concurrent fifteen-year terms of imprisonment for the drug offenses based upon the barn-burnings. He was later acquitted of the arsons.

In Lambert we held that factors related to violation of probation or community control cannot support departure. The one-cell bump-up provided for in the guidelines is the only

allowable increase. See Fla. R. Crim. P. 3.701(d)(4). We quash the district court's decision and remand for resentencing within the guidelines.

It is so ordered.

EHRlich, C.J., and SHAW, BARKETT, 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

Fifth District - Case No. 87-983
(Marion County)

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for Petitioner

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Attorney General, Daytona Beach, Florida,
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