

# Supreme Court of Florida

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No. 74,022

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STATE OF FLORIDA, Petitioner,

vs .

JOSEPH CHARLES SPADARO, Respondent.

[February 15, 1990]

SHAW, J.

We have for review Spadaro v. State, 539 So.2d 1169 (Fla. 2d DCA 1989), based on express and direct conflict with Harris v. State, 520 So.2d 639 (Fla. 1st DCA), review denied, 536 So.2d 244 (Fla. 1988). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

The question presented is whether Carawan v. State, 515 So.2d 161 (Fla. 1987), may be retroactively applied on a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. In State v. Glenn, no. 73,496 (Fla. Feb. 15, 1990), we held that double jeopardy claims based on Carawan could

not be applied retroactively on a postconviction motion. We accordingly quash that portion of the district court's decision treating appellant's double jeopardy claim, order the district court to reinstate the trial court's denial of the motion for postconviction relief, and approve Harris.

It is so ordered.

EHRlich, C.J., OVERTON, McDONALD, BARKETT, GRIMES and KOGAN, J.J.,  
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

Second District - Case No. 88-3182  
(Pinellas County)

C. Marie King, Assistant State Attorney, Clearwater, Florida;  
Robert A. Butterworth, Attorney General and Katherine V. Blanco,  
Assistant Attorney General, Tampa, Florida,

for Petitioner

Joseph C. Spadaro, In Proper Person, Belle Glade, Florida,

for Respondent