

# Supreme Court of Florida

---

No. 74,908

---

ROBERT RAY FERGUSON, Petitioner,

vs .

STATE OF FLORIDA, Respondent.

[September 6, 1990]

BARKETT, J.

We have for review Ferguson v. State, 548 So.2d 1183 (Fla. 5th DCA 1989), which is in express and direct conflict with the Second District Court of Appeal's decision in Criales v. State, 526 So.2d 176 (Fla. 2d DCA 1988). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution.

The issue here was resolved adversely to the state in pope v. State, 561 So.2d 554 (Fla. 1990). For the reasons stated in

Pope, we quash the decision of the district court and remand with directions to impose a guidelines sentence.

It is so ordered.

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

Fifth District - Case No. 89-172

(Seminole County)

James B. Gibson, Public Defender and James R. Wulchak, Chief,  
Appellate Division, Assistant Public Defender, Seventh Judicial  
Circuit, Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney General and Bonnie Jean Parrish,  
Assistant Attorney General, Daytona Beach, Florida,

for Respondent