

Supreme Court of Florida

No. 75,163

WALLACE BOUDREAU,

Petitioner,

vs .

STATE OF FLORIDA,

Respondent.

[January 3, 1991]

PER CURIAM.

We have for review Boudreaux v. State, 553 So.2d 376 (Fla. 1st DCA 1989), based on express and direct conflict with Coulson v. State, 342 So.2d 1042 (Fla. 4th DCA 1977). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

The question posed by this case is the same as that in Larson v. State, No. 75,085 (Fla. Jan. 3, 1991), in which we disapproved a similar analysis used by this district court. Accordingly, the opinion below is quashed and the cause remanded to the district court to determine whether the conditions of probation imposed by the trial court were legal, as required by Larson.

It is so ordered.

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

EHRlich, J., concurs in result only with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

EHRLICH, J., concurring in result only.

I agree that the decision below should be quashed and remanded for reconsideration to determine whether the conditions of probation imposed in this case were illegal or otherwise "so egregious as to be the equivalent of fundamental error." Larson v. State, No. 75,085, slip op. at 5 (Fla. Jan. 3, 1991). However, **as** noted in my concurring opinion in Larson, I do not believe such a determination is necessarily "tantamount to resolving the case on the merits." Larson, slip op. at 4 n.1. Therefore, although it is unclear from the briefs and opinion below exactly what challenges were raised in the district court, I would not require the district court to reach the merits of all claims raised in order to justify a finding of waiver.

Application for Review of the Decision of the District Court of
Appeal - Direct Conflict of Decisions

First District - Case No. 88-3078

(Leon County)

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