

Supreme Court of Florida

No. 76,331

ADOLPH LOTT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

[June 20, 1991]

PER CURIAM.

We have for review Lott v. Lawrence, 564 So.2d 197 (Fla. 3d DCA 1990), based on express and direct conflict with Thomas v. Dyess, 557 So.2d 196 (Fla. 2d DCA 1990), quashed, No. 75,744 (Fla. May 16, 1991). The single issue presented by this case has been resolved by our opinion in Bowens v. Tyson, No. 74,370 (Fla. Apr. 25, 1991). Accordingly, the opinion under review is approved.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, GRIMES and HARDING, JJ.,
concur.
BARKETT, J., concurs specially with an opinion, in which KOGAN,
J., concurs.

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

Barkett, J., concurring specially.

I write to clarify the controlling facts in this case, which neither the majority opinion nor the district court's decision expresses. Lott moved for his release under the former Florida Rule of Criminal Procedure 3.133(b) when the state failed to formally charge him within thirty days of his arrest. After the trial court refused to release Lott, he filed an emergency petition for a writ of habeas corpus in the Third District Court of Appeal. The district court heard oral argument, but on the fortieth day after Lott's arrest, and prior to the district court's issuance of a decision, the state filed an information against Lott.

I agree with the majority that the result here is controlled by Bowens v. Tyson, No. 74,370 (Fla. Apr. 25, 1991), for the reasons expressed in my special concurrence in that case. Because Bowens controls, our decision today does not address the district court's discussion of what facts constitute good cause to delay the filing of an information.

KOGAN, J., concurs.

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

Third District - Case No. 90-1316

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