

Supreme Court of Florida

No. 77,790

ORIGINAL

ANDRE HENRY, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[March 26, 1992]

PER CURIAM.

We review Henry v. State, 576 So.2d 409 (Fla. 3d DCA 1991), based on conflict jurisdiction.¹

Henry was convicted of armed robbery while carrying a firearm, a first-degree felony punishable by life imprisonment, and sentenced as a habitual felony offender under section 775.084(4)(a)(1), Florida Statutes (1989), to life imprisonment. Henry seeks review claiming that first-degree felonies punishable by life imprisonment are not subject to the provisions of the habitual offender statute.

¹ Art. V, § 3(b)(3), Fla. Const.

We decided that issue contrary to Henry's position in Burdick v. State, No. 78,466 (Fla. Feb. 6, 1992). However, we also held in Burdick that sentencing under the habitual offender statute is permissive, not mandatory.

In this case, the State argued at sentencing that a life sentence is mandatory under section 775.084(4)(a)(1). In sentencing Henry, the trial court indicated that it did not have discretion to decline to impose a life sentence.

Accordingly, we approve the opinion below but remand for the trial court to reconsider Henry's sentence in light of our determination in Burdick that sentencing under the habitual offender statute is discretionary.

It is so ordered.

SHAW, C.J. and McDONALD, BARKETT, GRIMES, KOGAN and HARDING, JJ., concur.
OVERTON, J., dissenting with an opinion.

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

OVERTON, J., dissenting.

For the reasons expressed in my dissent in Burdick v. State, No. 78,466 (Fla. Feb. 6, 1992), the life sentence for this habitual offender is mandatory.

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

Third District - Case No. 89-2781

(Dade County)

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