

Supreme Court of Florida

ORIGINAL

No. 78,086

JOHN MOTEN, etc.,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[February 6, 1992]

PER CURIAM.

We review Moten v. State, 579 So. 2d 916 (Fla. 2d DCA 1991), in which the district court of appeal certified the following as a question of great public importance:

DOES A SECOND VIOLATION OF PROBATION
CONSTITUTE A VALID BASIS FOR A DEPARTURE
SENTENCE BEYOND THE ONE-CELL DEPARTURE
PROVIDED IN THE SENTENCING GUIDELINES?

Id. at 916. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

Though phrased in a different manner, this question has been answered negatively in our opinion in Williams v. State, No. 75,919 (Fla. Feb. 6, 1992). We quash the decision below to the extent that it conflicts with that opinion and remand the case for disposition consistent with that opinion.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, BARKETT, GRIMES, KOGAN and HARDING, 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 - Certified Great Public Importance

Second District - Case No. 90-02406

(Hillsborough County)

James Marion Moorman, Public Defender and Robert D. Rosen,
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Florida,

for Petitioner

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