

Supreme Court of Florida

ORIGINAL

No. 78,193

STATE OF FLORIDA,

Petitioner,

vs.

DONALD WALKER,

Respondent.

[March 5, 1992]

PER CURIAM.

We originally accepted for review Walker v. State, 580 So.2d 281 (Fla. 4th DCA 1991), based on conflict jurisdiction. See art. V, § 3(b)(3), Fla. Const. After further consideration, we have determined that jurisdiction was improvidently granted.

In Walker the Fourth District held that life felonies are not subject to enhancement under the habitual offender statute, section 775.084, Florida Statutes (1989). In 1986 the First

District had reached the opposite conclusion in Watson v. State, 504 So.2d 1267, 1270 (Fla. 1st DCA 1986), review denied 506 So.2d 1043 (Fla. 1987). However, in 1990, the First District held in Johnson v. State, 568 So.2d 519, 520 (Fla. 1st DCA 1990), that life felonies are not subject to the provisions of the habitual offender statute. This holding is consistent with the holding in Walker. Consequently, the cited decisions present no direct and express conflict as required by article V, section 3(b)(3) of the Florida Constitution. See Little v. State, 206 So.2d 9, 10 (Fla. 1968) (holding that in the result of intradistrict conflict, the decision later in time overrules the former as the decisional law in the district).

Accordingly, this Court is without jurisdiction to hear this cause and the case is hereby dismissed.

It is so ordered.

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

MCDONALD, J., dissents.

NO MOTION FOR REHEARING WILL BE ALLOWED.

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

Fourth District - Case No. 90-1919

(St. Lucie County)

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