

Supreme Court of Florida

ORIGINAL

No. 78,508

STATE OF FLORIDA, Petitioner,

vs.

WILLIAM CHARLES EASON, Respondent.

[February 6, 1992]

PER CURIAM.

We have for review State v. Eason, 16 F.L.W. D2211 (Fla. 3d DCA Aug. 20, 1991), in which the district court certified conflict with State v. Allen, 573 So.2d 170 (Fla. 2d DCA 1991); Pittman v. State, 570 So.2d 1045 (Fla. 1st DCA 1990), review denied, 581 So.2d 166 (Fla. 1991); and Donald v. State, 562 So.2d 792 (Fla. 1st DCA 1990), review denied, 576 So.2d 291 (1991).*

* We have jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution.

Eason was convicted of armed robbery and sentenced as a habitual violent felony offender under section 775.084(4)(b)(1), Florida Statutes (1989), to twenty-five years in prison. The State appealed the sentence and the district court affirmed.

The State argues that sentencing under the habitual offender statute is mandatory, not permissive, and thus the trial court was required to sentence the defendant to life in prison without eligibility for release for fifteen years, the maximum penalty set forth in the statute.

We rejected the State's interpretation of the habitual offender statute and disapproved Donald in Burdick v. State, No. 78,466 (Fla. Feb. 6, 1992), where we held that sentencing under both sections 775.084(4)(a)(1) and 775.084(4)(b)(1) is permissive, not mandatory.

Accordingly, we approve the opinion below and disapprove Allen and Pittman to the extent they are inconsistent with our opinion in Burdick.

It is so ordered.

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

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 Direct Conflict of Decisions

Third District - Case No. 90-2442

(Dade County)

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