Supreme Court of Florida

No. 79,535

ORIGINAL

STATE OF FLORIDA, Petitioner,

vs.

WILLIE ANDERSON, Respondent.

[February 11, 1993]

SHAW, J.

We have for review Anderson v. State, 592 So. 2d **1119** (Fla. 1st **DCA** 1991), wherein **the** court certified **the** following question:

> Does the holding in Eutsey v. State, **383** So. 2d 219 (Fla. 1980), that the state has no burden of proof as to whether the convictions necessary for habitual felony offender sentencing have been pardoned or set aside, in that they are "affirmative defenses available to [a defendant]," Eutsey at 226, relieve **the** trial court of its statutory obligation to make findings regarding those factors, if the defendant does not affirmatively raise, as a defense, that the qualifying convictions provided by the state have been pardoned or set aside?

Anderson, 592 So. 2d at 1121. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered this question in the negative in State v. Rucker, No. 79,932 (Fla. Feb. 4, 1993), but held that harmless error analysis may be applied on appeal, We quash the decision of the district court in Anderson and remand for proceedings consistent with Rucker.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, 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

First District - Case No. 90-647

(Taylor County)

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for Petitioner

Nancy A. Daniels, Public Defender and Carol Ann Turner, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Respondent