

# Supreme Court of Florida

**ORIGINAL**

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No. 79,963

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MICHAEL ANDRE' FUNCHESS,  
Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[November 25, 1992]

OVERTON, J.

We have for review Funchess v. State, 597 So. 2d 985 (Fla. 1st DCA 1992), in which **the** district court certified the same questions we recently answered in the negative in Tillman v. State, No. 78,715 (Fla. Nov. 19, 1992). For the reasons expressed in Tillman, we approve the decision of the district court.

It is so ordered.

McDONALD, SHAW, GRIMES and HARDING, JJ., concur,  
KOGAN, J., dissents with an opinion, in which BARKETT, C.J.,  
concur.

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

KOGAN, J., dissenting.

I dissent on the basis of my dissenting opinion in Tillman v. State, No. 78,715 (Fla, Nov. 19, 1992). The petitioner has only been convicted of one violent crime and therefore cannot be a habitual violent felony offender.

BARKETT, C.J., concur.

**Application for Review of the Decision of the District Court of  
Appeal - Certified Great Public Importance**

First District - Case No. 91-3154

(Duval County)

**Nancy A. Daniels, Public Defender and P. Douglas Brinkmeyer,  
Assistant Public Defender, Second Judicial Circuit, Tallahassee,  
Florida,**

for Petitioner

**Robert A. Butterworth, Attorney General; James W. Rogers, Bureau  
Chief, Assistant Attorney General and Charlie McCoy, Assistant  
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for Respondent