Supreme Court of Florida

ORIGINAL

No. 80,033

STATE OF FLORIDA, Petitioner,

vs.

KURT VAN BRYANT, Respondent.

[February 11, 1993]

SHAW, J.

We have for review Van Bryant v. State, 602 So. 2d 582 (Fla. 4th DCA 1992), 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?

Van Bryant, 602 So. 2d at **583**. 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 Van Bryant and remand far proceedings consistent with Rucker, which applies to both habitual felony offenders and habitual violent felony offenders.

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

Fourth District - Case No. 91-2057

(Broward County)

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