

Supreme Court of Florida

ORIGINAL

No. 80,037

DERRICK ACKERS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

[February 25, 1993]

PER CURIAM.

We originally accepted State v. Ackers, 599 So. 2d 222 (Fla. 5th DCA 1992), based on apparent conflict with McPhadder v. State, 475 So. 2d 1215 (Fla. 1985). Upon further review we find these two cases factually distinguishable. Accordingly, jurisdiction was improvidently granted, and this cause is dismissed.

It is so ordered,

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

NO MOTION FOR REHEARING WILL BE ALLOWED.

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

Fifth District - Case No. 91-735

(Orange County)

James B. Gibson, Public Defender; and Paolo G. Annino and Anne
Moorman Reeves, Assistant Public Defenders, Seventh Judicial
Circuit, Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, attorney General and Nancy Ryan, Assistant
Attorney General, Daytona Beach, Florida,

for Respondent