

Supreme Court of Florida

ORIGINAL

No. 80,060

WILLIE BUTLER, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[January 21, 1993]

OVERTON, J.

We have for review Butler v. State, 599 So. 2d 1295 (Fla. 1932), in which the district court considered the same question we recently answered in State v. Johnson, Nos. 79,150 & 73,203 (Fla. Jan. 14, 1993).¹ In accordance with our decision in

¹ We have jurisdiction. Art. V, § 3(b)(3)-(4), Fla. Const.

Johnson, we quash the decision of the district court in the instant case and remand this cause for resentencing.

It is so ordered.

BARKETT, C.J., and McDONALD, SHAW, 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**

Fifth District - Case No, 91-2137

(Orange County)

**James B. Gibson, Public Defender and Sophia B. Ehringer,
Assistant Public Defender, Seventh Judicial Circuit, Daytona
Beach, Florida,**

for Petitioner

**Robert A. Butterworth, Attorney General and Anthony J. Golden,
Assistant, Attorney General, Daytona Beach, Florida,**

for Respondent