

Supreme Court of Florida

ORIGINAL

No. 80,071

JOSEPH BURTON, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

(January 21, 1993]

OVERTON, J.

We have for review Burton v. State, 600 So. 2d 1110 (Fla. 2d DCA 1992), in which the district court addressed the same question we recently answered in State v. Johnson, Nos. 79,150 & 79,204 (Fla. Jan. 14, 1993).¹ In accordance with our decision in Johnson, we quash, in part, the decision of the district court in the instant case.

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

Nevertheless, we approve Burton's sentence. **The** record in this case reflects that Burton was sentenced under section 775.084, Florida Statutes (1989), because of several prior felony convictions. None of the prior conviction categories under which Burton was habitualized were altered by the amendments to section 775.084 contained in chapter 89-280, Laws of Florida. Consequently, we approve the result of the district court's decision because Burton's sentence is not affected by our decision in Johnson. We decline to consider **the** remaining issues raised by Burton.

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 - Direct Conflict of Decisions

Second District - Case No. 92-01946

(Lee County)

Joseph Burton, in proper person, Arcadia, Florida,

for Petitioner

Robert A. Butterworth, Attorney General; and Peggy A. Quince and
Brenda S. Taylor, Assistant Attorney General, Tampa, Florida,

for Respondent