

Supreme Court of Florida

ORIGINAL

No. 80,081

STATE OF FLORIDA, Petitioner,

vs .

RONALD HERBERT HILL, Respondent.

[February 11, 1993]

SHAW, J.

We have for review Hill v. State, 602 So. 2d 590 (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?

See Hill, 602 So. 2d at 591. 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 Hill and remand for proceedings consistent with Rucker.

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. 91-2426

(Broward County)

Robert A. Butterworth, Attorney General; Joan Fowler, Senior
Assistant Attorney General and Carol Coburn Asbury, Assistant
Attorney General, West Palm Beach, Florida,

for Petitioner

Richard L. Jorandby, Public Defender and Joseph R. Chloupek,
Assistant Public Defender, Fifteenth Judicial Circuit, West palm
Beach, Florida,

for Respondent