Supreme Court of Florida

ORIGINAL

No. 80,513

STATE OF FLORIDA, Petitioner,

vs.

LEWIS D. CRITTON, Respondent.

[February 11, 1993]

SHAW, J.

We have for review Critton v. State, 604 So. 2d 933 (Fla. 1st DCA 1992), wherein the court certified the same question that was certified in Anderson v. State, 592 So. 2d 1119 (Fla. 1st DCA 1992):

> 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?

Anderson, 592 So.2d at 1121. 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 Critton and remand for 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

First District - Case No. 91-3108

(Duval County)

Robert A. Butterworth, Attorney General and Bradley R. Bischoff, Assitant Attorney General, Tallahassee, Florida,

for Petitioner

Nancy A. Daniels, Public Defender and Carol Ann Turner, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Respondent