Supreme Court of Florida

No. 83,619

REGINALD LEETREZ GILYARD,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

[April 13, 1995]

ANSTEAD, J.

We have for review the case of Gilyard v. State, 636 So. 2d 134 (Fla. 2d DCA 1994), in which the district court certified the following question as one of great public importance:

> DOES THE RULE IN STATE v. VANKOOTEN, 522 So. 2d 830 (Fla. 1988), APPLY IN THE SITUATION WHERE THE RANGE DOES NOT PROVIDE SANCTIONS PHRASED IN THE DISJUNCTIVE BUT MERELY PROVIDES FOR A TERM OF YEARS?

Id. at 136. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We answer the certified question in the negative and approve the district court opinion.

At issue in the district court was whether our prior opinions involving disjunctive sentencing options, such as a term of incarceration or community control, restrict a sentencing judge's discretion when there is no disjunctive sentencing provision. The district court, in a succinct opinion by Acting Chief Judge Danahy, has correctly analyzed our opinions and identified our intent. For that reason, we see no need to elaborate further and we approve the district court decision and adopt Judge Danahy's opinion as our own.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING and WELLS, 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
Second District - Case Nos. 91-03068, 91-03070, 91-03117 & 91-03119

(Hillsborough County)

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for Petitioner

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