

Supreme Court of Florida

ORIGINAL

No. 83,628

STATE OF FLORIDA, Petitioner,

vs.

GEORGE CHERRYHOMES, Respondent.

[December 22, 1994]

OVERTON, J.

We have for review Cherryhomes v. State, 635 So. 2d 985 (Fla. 2d DCA 1994), in which the district court of appeal certified the following question as one of great public importance:

DOES A FINDING OF INCOMPETENCY TO TESTIFY BECAUSE ONE IS UNABLE TO RECOGNIZE THE DUTY AND OBLIGATION TO TELL THE TRUTH SATISFY THE LEGISLATIVE "TESTIFY OR BE UNAVAILABLE" REQUIREMENT OF SECTION 90.803(23)(a)(2)?

Id. at 988. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We recently answered this question affirmatively in State

v. Townsend, 635 So. 2d 949 (Fla. 1994). Because the district court in this case reached a contrary conclusion, we quash the district court's decision and remand this case for further proceedings consistent with our opinion in Townsend.

It is so ordered.

GRIMES, C.J., SHAW, KOGAN, HARDING, WELLS and ANSTEAD, 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 No. 92-02588

(Pinellas County)

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