

Supreme Court of Florida

No. 84,832

GEORGE SINKS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

[October 12, 1995]

PER CURIAM.

We have for review Sinks v. State, 646 So. 2d 229 (Fla. 4th DCA 1994), in which the district court addressed the same question we recently answered in Gilyard v. State, 653 So. 2d 1024 (Fla. 1995). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

In accordance with our decision in Gilyard, we approve Sinks' sentence to the extent that it combines incarceration and community control because neither the recommended range nor the permitted range was phrased in the disjunctive. However, this sentence impermissibly exceeds a one-cell increase from the original guideline range cell. See Fla. R. Crim. P. 3.701(d)(14); Lambert v. State, 545 So. 2d 838 (Fla. 1989). We therefore remand to the trial court to reduce the sentence by the amount it exceeds the next higher cell. Id. Sinks does not have to be present for resentencing.

It is so ordered.

GRIMES, C.J., and OVERTON, 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 - Direct Conflict of Decisions
Fourth District - Case No. 93-3388

(Indian River County)

Richard L. Jorandby, Public Defender and Margaret Good-Earnest,
Assistant Public Defender, Chief, Appellate Division, Fifteenth
Judicial Circuit, West Palm Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney General; Joan Fowler, Senior
Assistant Attorney General; and Melynda L. Melear and Sara B.
Mayer, Assistant Attorneys General, West Palm Beach, Florida,

for Respondent