# Supreme Court of Florida

No. 85,264

STATE OF FLORIDA,

Petitioner,

vs.

SAMMIE EARL BANKSTON,

Respondent.

[August 24, 1995]

PER CURIAM.

We have for review the Second District's decision in Bankston v. State, 651 So. 2d 719 (Fla. 2d DCA 1995), wherein the district court certified the following question of great public importance:

> WHERE A DEFENDANT IS SENTENCED AT THE SAME SENTENCING HEARING FOR A NEW FELONY AND A VIOLATION OF PROBATION GROUNDED UPON THE NEW FELONY, IS THE TRIAL COURT LIMITED TO A ONE-CELL INCREASE FROM THE ORIGINAL SCORESHEET UNDER THE

SENTENCING GUIDELINES FOR THE VIOLATION OF PROBATION, PURSUANT TO GRADY v. STATE, 618 SO. 2D 341 (FLA. 2D DCA 1993), OR CAN THE TRIAL COURT IMPOSE THE MOST SEVERE SENTENCING SCHEME PERMISSIBLE AS TO BOTH CRIMES AS OUTLINED IN STATE v. TITO, 616 SO. 2D 39 (FLA. 1993)?

We have jurisdiction. Art. V, § 3 (b)(4), Fla. Const.

In State v. Lamar, No. 84,867 (Fla. Aug. 24, 1995), we have answered an identical question. In so doing, we held that when a defendant is being sentenced for both a violation of probation and a new substantive offense, the trial court is not limited to a one-cell bump on the original scoresheet for the violation of probation offense, but is permitted to use the scoresheet which recommends the most severe sanction.

Therefore, we quash the district court's decision to the extent it is inconsistent with Lamar, and direct that further proceedings be in accord herewith.

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 - Certified Great Public Importance
Second District - Case No. 92-03352

(Hillsborough County)

Robert A. Butterworth, Attorney General; Robert J. Krauss, Senior Assistant Attorney General and Ann P. Corcoran, Assistant Attorney General, Tampa, Florida,

for Petitioner

James Marion Moorman, Public Defender and John T. Kilcrease, Jr., Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Respondent