

Supreme Court of Florida

No. 87,092

STATE OF FLORIDA,

Petitioner,

vs.

ALPHONSO LEE,

Respondent.

[July 18, 1996]

PER CURIAM.

We have for review a decision on the following question certified to be of great public importance:

WHEN A CONVICTION FOR ATTEMPTED FIRST DEGREE FELONY MURDER MUST BE VACATED ON AUTHORITY OF STATE V. GRAY, 654 So. 2d 552 (Fla. 1995), DO LESSER INCLUDED OFFENSES REMAIN VIABLE FOR A NEW TRIAL OR REDUCTION OF THE OFFENSE?

Lee v. State, 664 So. 2d 330, 331 (Fla. 3d DCA 1995). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered this question in State v. Wilson, No. 86,680 (Fla. July 3, 1996), by holding that where a conviction for attempted felony murder has been vacated on the basis of our opinion in Gray, the proper remedy is retrial on any lesser offense instructed on at trial. Wilson, slip op. at 3. We quash the decision below and remand for proceedings consistent with our opinion in Wilson.

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, 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
Third District - Case No. 95-263

(Dade County)

Robert A. Butterworth, Attorney General and Fleur J. Lobree,
Assistant Attorney General, Miami, Florida,

for Petitioner

Bennett H. Brummer, Public Defender, Eleventh Judicial Circuit,
and Jane D. Fishman, Special Assistant Public Defender,
Plantation, Florida,

for Respondent