

Supreme Court of Florida

ROBERT DUNHAM,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 87,269

[January 23, 1997]

PER CURIAM.

We review Dunham v. State, 21 Fla. L. Weekly D89 (Fla. 4th DCA Jan. 3, 1996), which conflicts with Burrell v. State, 610 So. 2d 594 (Fla. 2d DCA 1992). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution.

The conflict in this case has now been resolved by this Court's recent decision in Walker v. State, 682 So. 2d 555 (Fla. 1996). In Walker, as in the instant case, the defendant was determined to be a habitual offender but as part of a plea bargain was not sentenced as such. Instead, he was sentenced to five years in prison followed by five years' probation, a sentence well below the sentencing guidelines, with the understanding that in the event of a subsequent probation violation he could be sentenced as a habitual offender. Thereafter, when he violated his probation, he was sentenced as a habitual offender.

In Walker, we relied upon our prior decision in King v. State, 681 So. 2d 1136 (Fla. 1996), in which we approved such a hybrid sentencing arrangement if the defendant had agreed to it at the time of his original

sentencing. Therefore, we approve the decision of the court below, and disapprove Burrell to the extent that it conflicts with this opinion.

It is so ordered.

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 - Direct Conflict of
Decisions

Fourth District - Case No. 94-3460

(Broward County)

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