

Supreme Court of Florida

No. 87,768

STATE OF FLORIDA,

Petitioner,

vs.

ARNOLD LEON PRATT, JR.,

Respondent.

[November 14, 1996]

PER CURIAM.

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

WHEN A DEFENDANT IS CHARGED WITH ATTEMPTED SECOND-DEGREE (DEPRAVED MIND) MURDER AND IS CONVICTED BY A JURY OF THE CATEGORY 2 LESSER-INCLUDED OFFENSE OF ATTEMPTED THIRD-DEGREE (FELONY) MURDER, DO STATE v. GRAY, 654 So. 2d 552 (Fla. 1995), AND SECTION 924.34, FLORIDA STATUTES (1991), REQUIRE OR PERMIT THE TRIAL COURT, UPON REVERSAL OF THE CONVICTION, TO ENTER JUDGMENT FOR ATTEMPTED VOLUNTARY MANSLAUGHTER, A CATEGORY 1 NECESSARILY INCLUDED LESSER OFFENSE OF THE CRIME CHARGED?

IF THE ANSWER IS NO, THEN DO LESSER-INCLUDED
OFFENSES OF THE CHARGED OFFENSE REMAIN VIABLE
FOR A NEW TRIAL?

Pratt v. State, 668 So. 2d 1007, 1009-10 (Fla. 1st DCA 1996). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered this question in State v. Wilson, 21 Fla. L. Weekly S292 (Fla. July 5, 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 which was instructed on at trial. Here, Pratt's conviction for attempted third-degree felony murder means he was effectually acquitted of the charge of attempted second-degree murder. He may therefore be tried on any other offense instructed on below which was equal to or lesser than attempted third-degree felony murder: here the jury was also instructed on attempted manslaughter.

We approve the decision of the district court, answer the certified question as explained above, and remand for proceedings consistent with this opinion.

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
First District - Case No. 94-1432

(Okaloosa County)

Robert A. Butterworth, Attorney General; James W. Rogers,
Tallahassee Bureau Chief, Criminal Appeals, and Carolyn J.
Mosley, Assistant Attorney General, Tallahassee, Florida,

for Petitioner

Nancy A. Daniels, Public Defender and Jamie Spivey, Assistant
Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Respondent