

Supreme Court of Florida

STATE OF FLORIDA,
Petitioner,

vs.

TRISTON ELLIS,
Respondent.

No. 88,323 & 88,342

[December 19, 1996]

PER CURIAM.

We have for review a decision certifying the following question 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?

Ellis v. State, 21 Fla. L. Weekly D1434 (Fla. 1st DCA June 19, 1996). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered this question in State v. Wilson, 680 So. 2d 411 (Fla. 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 included offense which was instructed on at trial. Ellis was convicted

of attempted first-degree felony murder. Therefore, he may be tried on any offense instructed on at trial which is of a degree equal to or lesser than attempted first-degree felony murder.

We answer the certified question as explained above. We approve in part and quash in part the district court's decision and remand for proceedings consistent 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.

Two Cases Consolidated: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance
First District - Case No. 94-3648

(Gadsden County)

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