

# Supreme Court of Florida

STATE OF FLORIDA,  
Petitioner,

vs.

MAURICE HARRIS,  
Respondent.

No. 88,473

[April 3, 1997]

HARDING, J.

We have for review a decision passing 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?

Harris v. State, 674 So. 2d 854, 855 (Fla. 3d DCA 1996). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered this question in State v. Wilson, 680 So. 2d 411, 412-13 (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 other offenses of an equal or lesser degree which which were

instructed on at trial. Harris was convicted of attempted first-degree felony murder. Therefore, he may be tried on any of the offenses instructed on at trial which are of a degree equal to or lesser than attempted first-degree felony murder.

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

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, 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. 95-771

(Dade County)

Robert A. Butterworth, Attorney General and Richard L. Polin, Assistant Attorney General, Miami, Florida,

for Petitioner

Bennett H. Brummer, Public Defender and Rosa C. Figarola, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida,

for Respondent