

# Supreme Court of Florida

**MATTHEW CULLEN,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

No. **89,849**

[October 2, 1997]

## PER CURIAM.

We have for review the opinion in Cullen v. State, 687 So. 2d 44 (Fla. 3d DCA 1997), which certified conflict with the opinions in State v. Guthrie, 666 So. 2d 562 (Fla. 2d DCA 1995), and Fason v. State, 674 So. 2d 916 (Fla. 2d DCA 1996). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

This Court recently quashed the decision of the district court of appeal in Guthrie v. State, 692 So. 2d 888 (Fla. 1997); see Sapp v. State, 690 So. 2d 581 (Fla. 1997) (holding that an accused may not effectively invoke the right to counsel under the Fifth Amendment of the federal constitution or article I, section 9 of the Florida Constitution until custodial interrogation has begun or is imminent). Accordingly, we disapprove the decision in Fason and approve the decision of the court below.

It is so ordered.

**OVERTON, GRIMES, HARDING** and  
**WELLS, JJ.**, concur.  
**ANSTEAD, J.**, concurs in result only.  
**KOGAN, C.J.**, and **SHAW, J.**, dissent.

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 Direct  
Conflict of Decisions

Third District - Case No. 96-704

(Dade County)

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for Petitioner

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