

Supreme Court of Florida

JOHNNIE E. HILL,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 90,049

[September 11, 1997]

SHAW, J.

We have for review Hill v. State, 696 So. 2d 798 (Fla. 2d DCA 1997), wherein the court certified:

On what date was the Coney decision "announced"?^[1]

Id. at 798-99 (quotation marks added). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We recently answered the above question in Henderson v. State, 22 Fla. Law Weekly S384 (Fla. June 26, 1997), wherein we held that Coney became final when the time for rehearing in that case had run. Because the trial in the present case preceded that date, Hill

¹ In Coney v. State, 653 So. 2d 1009, 1013 (Fla.), cert. denied, 116 S. Ct. 315 (1995), this Court held that "[t]he defendant has a right to be physically present at the immediate site where pretrial jury challenges are exercised."

cannot reap the benefits of Coney.² We approve the result in Hill on this issue.'

It is so ordered.

KOGAN, C.J. and OVERTON, 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

Second District - Case No. 95-00448

(Hillsborough County)

² We noted in Coney: "Our ruling today clarifying this issue is prospective only." Id. at 1013.

³ Because Coney is inapplicable to this case, the district court's second certified question is moot:

If a Coney issue is not preserved at trial, must a prisoner file a postconviction motion alleging under oath that he or she would not have exercised peremptory challenges in the same manner as his or her attorney?

James Marion Moorman, Public Defender and
John C. Fisher, Assistant Public Defender,
Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Robert A. Butterworth, Attorney General;
Robert J. Krauss, Senior Assistant Attorney
General, Chief of Criminal Law, and Deborah
F. **Hogge**, Assistant Attorney General, Tampa,
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for Respondent