

# Supreme Court of Florida

**DENO S. GREEN,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

No. 90,696

[July 16, 1998]

SHAW, J.

We have for review Green v. State, 691 So. 2d 502 (Fla. 5th DCA 1997), based on conflict with Myers v. State, 696 So. 2d 893 (Fla. 4th DCA 1997). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve the result in Green as explained herein.

Deno Green argued with his roommate on September 20, 1994, over use of the telephone. Green shot him and was convicted of attempted voluntary manslaughter with a handgun. His median recommended sentence<sup>1</sup> under the guidelines was 65.8 months, and his recommended range was between 49.35 and 82.25 months. The statutory maximum sentence for the offense was 60 months. The court sentenced him to 72 months and the district court affirmed. Green claims that trial court erred in sentencing him above the statutory maximum. We disagree.

We addressed this issue in Mays v. State,

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<sup>1</sup> See § 921.0014, Fla. Stat. (1993) (explaining that the median recommended sentence is equal to "total sentence points minus 28").

No. 90,826 (Fla. July 16, 1998), wherein we construed the 1994 amendment to the sentencing guidelines. We explained that if the guidelines sentence--i.e., the "true" recommended guidelines sentence--exceeds the statutory maximum, the court is authorized to impose the guidelines sentence. In the present case, the "true" recommended guidelines sentence, i.e., 72 months, exceeds the statutory maximum, i.e., 60 months. The court thus was authorized to exceed the maximum. We approve the result in Green on this issue.

It is so ordered.

HARDING, C.J., and OVERTON and WELLS, JJ., concur.

PARIENTE, J., concurs in part and dissents in part with an opinion, in which KOGAN and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

PARIENTE, J., concurring in part and dissenting in part.

For the reasons expressed in my concurring in part and dissenting in part opinion in Mays v. State, No. 90,826 (Fla. July 16, 1998), I concur in part and dissent in part. Accordingly, in my opinion, the maximum sentence the trial court could impose beyond the 60 month statutory maximum was 65.8 months, which was the "recommended sentence" based on scoresheet calculations.

KOGAN and ANSTEAD, JJ., concur.

Application for Review of the Decision of the  
District Court of Appeal - Direct Conflict of  
Decisions

Fifth District - Case No. 96-394

(Orange County)

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