

Supreme Court of Florida

JOE L. MOBLEY,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 91,528

[July 16, 1998]

PER CURIAM.

We have for review the decision in Mobley v. State, 699 So. 2d 328 (Fla. 2d DCA 1997), which the district court certified to be in conflict with the opinion in Galloway v. State 680 So. 2d 616 (Fla. 4th DCA 1996): concerning the issue of whether additional sentencing points for carrying or possessing a firearm during the commission of a crime may be added to a defendant's sentencing score where the defendant is convicted of carrying a concealed weapon or possession of a firearm by a convicted felon. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

Recently, we resolved this conflict in White v. State, 23 Fla. L. Weekly S 3 11 (Fla. June 12, 1998), wherein we held that it is error for a trial court to assess additional sentencing points for possessing a firearm where the sole underlying crime is carrying a concealed firearm or possession of a firearm by a convicted felon. In other words, rule 3.702(d)(12) of the Florida Rules of Criminal Procedure and section 921.0014, Florida Statutes (1993), do not contemplate the addition of sentencing points for carrying or

possessing a firearm where the carrying or possession of a firearm is the essential element of the underlying offense. In so holding, we approved the Fourth District's opinion in Galloway.

In this case, the defendant entered a negotiated plea to, "among other things, possession of a firearm by a convicted felon." Mobley, 699 So. 2d at 328. However, we are unable to ascertain from the record and opinion below whether the defendant possessed a firearm during the commission of any of the additional offenses to which he pled. Consequently, we remand this case for further proceedings in accordance with our opinion in White.

It is so ordered.

HARDING, C.J., and OVERTON, SHAW, KOGAN and ANSTEAD, JJ., concur.
WELLS, J., dissents with an opinion.

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

WELLS, J., dissenting.

I dissent for the reasons stated in my dissenting opinions in Asbell v. State, No. 91,078 (Fla. July 16, 1998); and White v. State, 23 Fla. L. Weekly S3 11 (Fla. June 12, 1998).

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

Second District - Case No. 96-0 1960

(Charlotte County)

James Marion Moorman, Public Defender, and
Austin H. Maslanik, Assistant Public
Defender, Tenth Judicial Circuit, Bat-tow,
Florida,

for Petitioner

Robert A. Butterworth, Attorney General,
Robert J. Krauss, Senior Assistant Attorney
General, Chief of Criminal Law, and Ronald
Napolitano, Assistant Attorney General,
Tampa, Florida,

for Respondent