

Supreme Court of Florida

PATRICIA HILTON SHIVER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

No. 91,793

[July 16, 1998]

CORRECTED OPINION

PER CURIAM.

We have for review the decision in State v. Shiver, 700 So. 2d 780 (Fla. 2d DCA 1997), which the district 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 311 (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, we held that 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.

Therefore, in accordance with our decision in White, we quash the decision below.

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 S311 (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. 97-00884

(Polk County)

James Marion Moorman, Public Defender,
and Cynthia J. Dodge, 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 Susan D.
Dunlevy, Assistant Attorney General, Tampa,
Florida,

for Respondent