

Supreme Court of Florida

JAMES ROBERT HANKS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 91,794

[July 16, 1998]

PER CURIAM.

We have for review the decision in State v. Hanks, 700 So. 2d 779 (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 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, 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. We also decline to address petitioner's remaining point on review as it is beyond the scope of the conflict issue and has been rendered moot by our disposition of this case.¹

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. 97-00862

¹Petitioner argues that the district court lacked jurisdiction of the State's appeal because the alleged error did not render the sentence illegal, nor was the sentence outside of the sentencing guidelines.

(Polk County)

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Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

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for Respondent