

# Supreme Court of Florida

ANDREW SULLIVAN,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

No. 91,850

[July 16, 1998]

## PER CURIAM.

We have for review the opinion in State v. Sullivan, 701 So. 2d 633 (Fla. 2d DCA 1997), which certified 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 11, 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.<sup>1</sup>

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

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<sup>1</sup>Petitioner argues that the district court lacked jurisdiction to hear this case because, although improper, the assessment of additional sentencing points did not create an illegal sentence or render the sentence outside of the sentencing guidelines.

Second District - Case No. 97-00994

(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 Jean-  
Jacques A. Darius, Assistant Attorney  
General, Tampa, Florida,

for Respondent