

Supreme Court of Florida

CHARLES WILLIAM FLOYD,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 92,602

[October 1, 1998]

SHAW, J.

We have for review Floyd v. State, 707 So. 2d 833 (Fla. 1st DCA 1998), based on conflict with Myers v. State, 696 So. 2d 893 (Fla. 4th DCA 1997), quashed, 23 Fla. L. Weekly S400 (Fla. July 16, 1998). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve Floyd as explained below.

Charles William Floyd entered a plea of nolo contendere to driving with a suspended license, driving under the influence of alcohol resulting in serious injuries, and leaving the scene of an accident with injuries--all third-degree felonies as charged. The trial court accepted the plea. The median

recommended sentence¹ under the guidelines was 5.09 years, and the recommended range was between 3.81 years to 6.36 years. The statutory maximum for each of the offenses was five years. The trial court sentenced Floyd to three concurrent six-year terms, and the district court affirmed. He now contends that the court erred in sentencing in excess of 5.09 years. We disagree.

We recently addressed this issue in Mays v. State, 23 Fla. L. Weekly S387 (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., six years, exceeds the statutory maximum, i.e., five years. The court thus was authorized to exceed the maximum and impose the six-year terms. We approve

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

the result in Floyd on this issue.²

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.

I concur in part and dissent in part for the reasons expressed in my opinion in Mays v. State, 23 Fla. L. Weekly S387, S387-88 (Fla. July 16, 1998) (Pariente, J., concurring in part and dissenting in part). Accordingly, in my opinion, the maximum sentence the trial court could impose beyond the five-year statutory maximum was 5.09 years, which was the "recommended sentence" based on the scoresheet calculations.

KOGAN and ANSTEAD, JJ., concur.

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

First District - Case No. 96-4571

(Escambia County)

Glen P. Gifford, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, James W. Rogers, Tallahassee Bureau Chief, Criminal Appeals, and Charmaine M. Millsaps, Assistant Attorney General, Tallahassee, Florida,

for Respondent

² We decline to address the other issue raised by Floyd since it was not the basis for our review.