

# Supreme Court of Florida

**KIMBERLI JORDAN,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

No. 92,702

[October 8, 1998]

SHAW, J.

We have for review Jordan v. State, 707 So. 2d 816 (Fla. 5th DCA 1998), wherein the district court cited for support Mays v. State, 693 So. 2d 52 (Fla. 5th DCA 1997), which was pending in this Court. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

We have since approved the district court decision in Mays. See Mays v. State, 23 Fla. L. Weekly S387 (Fla. July 16, 1998) (holding that under section 921.001(5), Florida Statutes (1995), if the "true" recommended guidelines sentence exceeds the statutory maximum, the guidelines sentence must be imposed). Accordingly, we approve

the result in Jordan on this issue.<sup>1</sup>  
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 stated in my opinion in Mays v. State, 23 Fla. L. Weekly S387, S387-89 (Fla. July 16, 1998) (Pariente, J., concurring in part and dissenting in part).

KOGAN and ANSTEAD, JJ., concur.

---

<sup>1</sup> We decline to address the other issues raised by Jordan since they were not the basis for our review.

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

Fifth District - Case No. 96-3589

(St. Johns County)

James B. Gibson, Public Defender, and  
Brynn Newton, Assistant Public  
Defender, Seventh Judicial Circuit,  
Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney  
General, and Lori E. Nelson, Assistant  
Attorney General, Daytona Beach,  
Florida,

for Respondent