

# Supreme Court of Florida

STATE OF FLORIDA,  
Petitioner,

vs.

EMANUEL O'NEAL,  
Respondent.

No. 92,769

[January 14, 1999]

SHAW, J.

We have for review O'Neal v. State, 707 So. 2d 1190 (Fla. 4th DCA 1998), wherein the district court certified conflict with Mays v. State, 693 So. 2d 52 (Fla. 5th DCA 1997). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We have since approved the district court decision in Mays. See Mays v. State, 717 So. 2d 515 (Fla. 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 quash O'Neal.<sup>1</sup>  
It is so ordered.

HARDING, C.J., WELLS, J., and OVERTON, Senior Justice, concur.  
PARIENTE, J., concurs in part and dissents in part with an opinion, in which ANSTEAD, J., and KOGAN, Senior Justice, 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, 717 So. 2d 515, 516-19 (Fla. 1998) (Pariente, J., concurring in part and dissenting in part).

ANSTEAD, J., and KOGAN, Senior Justice, concur.

Application for Review of the Decision  
of the District Court of Appeal -

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<sup>1</sup> We decline to address the other issue raised by O'Neal since it was not the basis for our review.

Certified Direct Conflict of Decisions

Fourth District - Case No. 96-3406

(Broward County)

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