

Supreme Court of Florida

STATE OF FLORIDA,
Petitioner,

vs.

JOHN HINDENACH,
Respondent.

No. 92,880

[October 29, 1998]

SHAW, J.

We have for review Hindenach v. State, 708 So. 2d 336 (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, 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 quash

Hindenach.¹

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, S387-89 (Fla. July 16, 1998) (Pariente, J., concurring in part and dissenting in part).

KOGAN and ANSTEAD, JJ., concur.

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

¹ We decline to address the other issue raised by Hindenach since it was not the basis for our review.

Fourth District - No. 97-0469
(St. Lucie County)

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