

Supreme Court of Florida

MARLENE SCOTT DAVIS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 93,135

[October 29, 1998]

PER CURIAM.

We have for review the decision in Davis v. State, 710 So. 2d 764 (Fla. 5th DCA 1998), 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 possession of a firearm by a convicted felon. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We recently resolved this conflict in White v. State, 714 So. 2d 440 (Fla.1998), wherein we held that it is error for a trial court to assess

additional sentencing points for carrying or 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, additional sentencing points for carrying or possessing a firearm during the commission of a crime may not be assessed against a defendant's sentencing score where the carrying or possessing of a firearm is the essential element of the underlying offense. Id. at 443-44. In so holding, we approved the opinion in Galloway.

Therefore, in accordance with our decision in White, we quash the decision below.

It is so ordered.

HARDING, C.J., and OVERTON, SHAW, KOGAN, ANSTEAD and PARIENTE, JJ., concur.

WELLS, J., dissents.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION,
AND IF FILED, DETERMINED.

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

Fifth District - No. 97-3557
(Orange County)

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for Petitioner

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