

Supreme Court of Florida

No. SC93430

SHAWN D. SPENCER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[July 13, 2000]

PER CURIAM.

We have for review Spencer v. State, 712 So. 2d 446 (Fla. 5th DCA 1998), a decision of the Fifth District Court of Appeal affirming on the authority of its opinion in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998), approved in part, disapproved in part, 25 Fla. L. Weekly S367 (Fla. May 11, 2000). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

Spencer claims that fundamental sentencing error occurred when he was

sentenced pursuant to a plea agreement to simultaneous periods of incarceration and probation. The State has not responded to these allegations, instead arguing only that the error is not preserved for appellate review. Because the merits of the sentencing error at issue in this case are not adequately briefed, we quash the decision below and remand for further proceedings in light of our opinion in Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000).

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

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 -
Direct Conflict

Fifth District - Case No. 5D97-2064

(Osceola County)

James B. Gibson, Public Defender, and Lyle Hitchens, Assistant Public Defender,
Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Belle B. Schumann and Wesley Heidt,
Assistant Attorneys General, Daytona Beach, Florida,

for Respondent