

Supreme Court of Florida

VICTOR D. BAKER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 93,486

[April 15, 1999]

SHAW, J.

We have for review State v. Baker, 713 So. 2d 1027 (Fla. 2d DCA 1998), wherein the district court certified:

What factors must be proven by a preponderance of the evidence to establish that the need for payment of restitution outweighs the need for a prison sentence to justify a downward departure sentence?

Id. at 1028. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We recently answered this question in Banks v. State, No. 93,469 (Fla. Apr. 15, 1999). We quash Baker and remand for proceedings consistent with Banks.

It is so ordered.

HARDING, C.J., WELLS, ANSTEAD and PARIENTE, JJ., and OVERTON and KOGAN, Senior Justices, 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 - Certified Great Public Importance

Second District -
Case No. 96-05191
(Pinellas County)

James Marion Moorman, Public Defender, and Allyn Giambalvo, Assistant Public Defender, Tenth Judicial Circuit, Clearwater, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, and Patricia E. Davenport, Assistant Attorney General, Tampa, Florida,

for Respondent