

Supreme Court of Florida

No. SC94256

STATE OF FLORIDA,
Petitioner,

vs.

TERRY MCKNIGHT,
Respondent.

[July 13, 2000]

PER CURIAM.

We have for review McKnight v. State, 23 Fla. L. Weekly D2402 (Fla. 1st DCA Oct. 23, 1998), a decision of the First District Court of Appeal certifying conflict with the decision of the Fifth District 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)(4), Fla. Const.

McKnight received a ten-year habitual offender sentence for possession of cocaine. A habitual offender sentence for possession of cocaine is expressly

prohibited by statute and the sentence imposed exceeds the maximum non-habitual offender sentence permitted for the offense. See McKnight, 23 Fla. L. Weekly at D2402. For the reasons expressed in our opinion in Maddox, we approve the decision of the First District that this constitutes fundamental error correctable during the window period discussed in Maddox.¹

It is so ordered.

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

ANSTEAD, J., recused.

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 of Decisions

First District - Case No. 1D97-1845

(Duval County)

Robert A. Butterworth, Attorney General, James W. Rogers, Tallahassee Bureau
Chief, Criminal Appeals, and Sherri Tolar Rollison, Assistant Attorney General,
Tallahassee, Florida,

for Petitioner

¹See also Leonard v. State, 25 Fla. L. Weekly S377, S378 n.4 (Fla. May 11, 2000) (rejecting State's argument that a fundamental sentencing error should remain uncorrected simply because the erroneous sentence is to be served concurrently with other sentences that are not being challenged).

Nancy A. Daniels, Public Defender, and Carl S. McGinnes, Assistant Public
Defender, Second Judicial Circuit, Tallahassee, Florida,

for Respondent