

Supreme Court of Florida

No. SC95753

MARK CHARLES,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[July 13, 2000]

PER CURIAM.

We have for review Charles v. State, 751 So. 2d 63 (Fla. 5th DCA 1999), a decision of the Fifth District Court of Appeal citing as controlling authority 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).

Charles argues that a sentencing error occurred under Tripp v. State, 622 So. 2d

941 (Fla. 1993), when the sentence imposed upon his revocation of probation failed to award credit for time served on his primary offense. In addition, Charles contends that because his underlying offense was committed before October 1, 1989, he is entitled to credit for accrued gain time as the functional equivalent of time spent in prison. If a sentencing error occurred that is patent and serious because it has a quantitative effect on the sentence and a qualitative effect on the sentencing process, the error should be corrected as fundamental error. See Maddox v. State, 25 Fla. L. Weekly S367, S369 (Fla. May 11, 2000).¹ Because the parties have not adequately briefed the merits of the alleged sentencing error at issue, we quash the decision below and remand for proceedings in light of our opinion in Maddox.

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.

¹In Maddox, we addressed the question of whether unpreserved sentencing errors should be corrected in appeals filed in the window period between the effective date of section 924.051, Florida Statutes (Supp. 1996), and our recent amendment to Florida Rule of Criminal Procedure 3.800(b) in Amendments to Florida Rules of Criminal Procedure 3.111(e) & 3.800 & Florida Rules of Appellate Procedure 9.020(h), 9.140, & 9.600, 24 Fla. L. Weekly S530 (Fla. Nov. 12, 1999), reh'g granted, 25 Fla. L. Weekly S37 (Fla. Jan. 13, 2000). The appeal in this case falls within the window period discussed in Maddox.

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

Fifth District - Case No. 5D98-871

(Putnam County)

James B. Gibson, Public Defender, and Rosemarie Farrell, Assistant Public Defender,
Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Anthony J. Golden, Kellie A. Nielan, and
Wesley Heidt, Assistant Attorneys General, Daytona Beach, Florida,

for Respondent