

Supreme Court of Florida

No. SC95776

STATE OF FLORIDA,
Appellant,

vs.

R.D.P., Jr.,
Appellee.

[January 6, 2000]

PARIENTE, J.

We have on appeal R.D.P. v. State, 735 So. 2d 551 (Fla. 2d DCA 1999), a decision of the district court declaring invalid section 874.074, Florida Statutes (Supp. 1996). We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Section 874.04 allows trial courts to enhance the degree of crime under which the defendant is charged on the basis of the defendant's membership in a criminal street gang. In State v. O.C., 24 Fla. L. Weekly S425 (Fla. Sept. 16, 1999), we recently concluded that this statute unconstitutionally violates

substantive due process. We therefore affirm the decision of the district court in this case.

It is so ordered.

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

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

An Appeal from the District Court of Appeal - Statutory or Constitutional Invalidity

Second District - Case No. 2D97-00720

(Polk County)

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