

Supreme Court of Florida

No. SC95949

BRIAN McLEAN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[August 24, 2000]

PER CURIAM.

We have for review McLean v. State, 732 So. 2d 1211 (Fla. 1st DCA 1999) wherein the First District Court of Appeal cited to Locke v. State, 719 So. 2d 1249 (Fla. 1st DCA 1998), approved, 25 Fla. L. Weekly S482 (fla. June 15, 2000), which was then pending review in this Court. We have jurisdiction. See Art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

Consistent with our decision in Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000)(approving Locke), we determine that McLean's unpreserved claim

relating to the trial court's failure to announce the imposition of restitution at his sentencing hearing and to advise him of the right to have a hearing on the amount of restitution does not rise to the level of fundamental error which may be reviewed for the first time on direct appeal. Further, based on our decision in Heggs v. State, 25 Fla. L. Weekly S137 (Fla. Feb. 17, 2000), we quash the district court's affirmance of McLean's sentence and remand for resentencing in accordance with the sentencing guidelines in effect before the relevant amendments made to chapter 95-184 became effective.¹

It is so ordered.

SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.
WELLS, C.J., concurs in part and dissents in part with an opinion.

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

WELLS, C.J., concurring in part and dissenting in part.

I concur in respect to the Maddox issue. I dissent as to the Heggs issue.

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

¹ McLean has standing to challenge chapter 95-184 on single subject rule grounds. See Trapp v. State, 25 Fla. L. Weekly S429 (Fla. June 1, 2000).

First District - Case No. 1D98-858

(Duval County)

Nancy A. Daniels, Public Defender, and Fred Parker Bingham II, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and James W. Rogers, Assistant Attorney General, Tallahassee, Florida,

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