

Supreme Court of Florida

No. SC96522

STATE OF FLORIDA,
Petitioner,

vs.

CHARLES W. CUMMINGS,
Respondent.

[July 6, 2000]

PER CURIAM.

We have for review State v. Cummings, No. 99-00519, 1999 Fla. App. LEXIS 11082 (Fla. 2d DCA Aug. 20, 1999), in which the Second District affirmed the imposition of a guidelines sentence on a defendant who qualified as a prison releasee reoffender, relying on State v. Cotton, 728 So. 2d 251 (Fla. 2d DCA 1998). In so doing, the Second District acknowledged conflict with Woods v. State, 740 So. 2d 20 (Fla. 1st DCA 1999), and McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA 1999). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

We recently approved the First District's decision in Woods, holding that the Act, as properly interpreted by the First District, does not violate separation of powers, and rejecting other constitutional challenges to the Act. See State v. Cotton, Nos. SC94996 & SC95281 (Fla. June 15, 2000). Accordingly, for the reasons expressed in Cotton, we quash the Second District's decision in this case, and remand for further proceedings consistent with our opinion in Cotton. Because it appears that the respondent entered a plea of guilty based upon the trial court's indication that respondent, upon such plea, would not be sentenced pursuant to the Act, upon remand to the trial court, respondent shall have the right to withdraw his guilty plea.

It is so ordered.

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

QUINCE, J., dissents with an opinion.

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

QUINCE, J., dissenting.

I dissent for the reasons stated in my dissent in State v. Cotton, Nos. SC94996 & SC95281 (Fla. June 15, 2000).

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

Second District - Case No. 2D99-00519

(Pinellas County)

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, and Erica M. Raffel, Assistant Attorney General, Tampa, Florida,

for Petitioner

James Marion Moorman, Public Defender, and Megan Olson, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Respondent