

Supreme Court of Florida

No. SC08-12

STATE OF FLORIDA,
Petitioner,

vs.

ALEXANDER WALKER, JR.,
Respondent.

[September 25, 2008]

PER CURIAM.

We have for review Walker v. State, 33 Fla. L. Weekly D44 (Fla. 2d DCA Dec. 21, 2007), in which the Second District Court of Appeal reversed a habitual offender sentence because the State did not present sufficient proof of the qualifying prior convictions. In remanding for resentencing under the Criminal Punishment Code, the Second District Court in Walker cited as authority its prior decision in Collins v. State, 893 So. 2d 592 (Fla. 2d DCA 2004), quashed in part, 985 So. 2d 985 (Fla. 2008), in holding that, because the defendant objected to the sufficiency of the evidence at the original sentencing hearing, on remand he must be sentenced within the guidelines. As it had done in Collins, the Second District

Court in Walker certified conflict with decisions of the First, Fourth and Fifth District Courts of Appeal as to whether upon remand for resentencing the State may present new habitual offender evidence. See Walker, 33 Fla. L. Weekly at D44. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

We stayed proceedings in this case pending disposition of Collins. We have since decided Collins, in which we held that “when a habitual offender sentence is reversed because of insufficient evidence, on remand for resentencing the State may again attempt to prove that the defendant meets the criteria for such sentencing.” State v. Collins, 985 So. 2d 985, 994 (Fla. 2008). In so holding, this Court quashed the Second District Court’s underlying Collins decision on this issue and approved the certified conflict cases from the First, Fourth and Fifth District Courts. See id.

We thus issued an order directing Respondent in the present case to show cause why we should not exercise jurisdiction, quash the Second District Court’s Walker decision, and remand for reconsideration in light of our decision in Collins. Respondent has filed a response conceding that he is unable to show such cause.

We accordingly grant the petition for review in the present case. The decision under review is quashed and this matter is remanded to the Second

District Court for reconsideration upon application of this Court's decision in Collins.

It is so ordered.

WELLS, ANSTEAD, PARIENTE, LEWIS, and BELL, JJ., and CANTERO, Senior Justice, concur.
QUINCE, C.J., dissents.

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

Second District - Case No. 2D06-4871

(Pinellas County)

Bill McCollum, Attorney General, Tallahassee, Florida, and Jonathan P. Hurley, Assistant Attorney General, Tampa, Florida,

for Petitioner

James Marion Moorman, Public Defender, and Jean Marie Henne, Special Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Respondent