

Supreme Court of Florida

No. SC13-1236

STATE OF FLORIDA,
Petitioner,

vs.

JIMMY MOORE, JR.,
Respondent.

[January 14, 2016]

PER CURIAM.

We initially accepted jurisdiction under article V, section 3(b)(4), of the Florida Constitution to review Moore v. State, 114 So. 3d 486 (Fla. 1st DCA 2013), a decision in which the First District Court of Appeal certified the following questions to be of great public importance:

IN ORDER FOR COUNSEL TO WAIVE AN ERROR IN A JURY INSTRUCTION THAT WOULD OTHERWISE BE FUNDAMENTAL, IS IT ONLY NECESSARY THAT COUNSEL AFFIRMATIVELY AGREE TO THE INSTRUCTION, OR IS IT ALSO NECESSARY FOR COUNSEL TO AFFIRMATIVELY AGREE TO THE PORTION OF THE INSTRUCTION THAT IS ERROR AND/OR TO BE AWARE THAT THE INSTRUCTION IS ERRONEOUS?

WHEN A DEFENDANT IS CONVICTED OF EITHER MANSLAUGHTER OR A GREATER OFFENSE NOT MORE THAN ONE STEP REMOVED, DOES THE FAILURE TO INSTRUCT THE JURY ON JUSTIFIABLE OR EXCUSABLE HOMICIDE CONSTITUTE FUNDAMENTAL ERROR NOT SUBJECT TO A HARMLESS ERROR ANALYSIS EVEN WHERE THE RECORD REFLECTS THERE WAS NO DISPUTE AS TO THIS ISSUE AND THERE WAS NO EVIDENCE PRESENTED FROM WHICH THE JURY COULD FIND JUSTIFIABLE OR EXCUSABLE HOMICIDE?

Id. at 493-94. After further consideration and hearing oral argument in this case, we have determined that we should exercise our discretion and discharge jurisdiction. Accordingly, we hereby dismiss review.

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, and PERRY, JJ., concur.
CANADY, J., dissents.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance

First District - Case No. 1D10-4052

(Madison County)

Pamela Jo Bondi, Attorney General, Trisha Meggs Pate, Bureau Chief, and Kathryn Lane, Assistant Attorney General, Tallahassee, Florida,

for Petitioner

Nancy Ann Daniels, Public Defender, and Kathleen Ann Stover, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Respondent