

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

McMillan v. State

516 So. 2d 1064 (Fla. 4th DCA 1987) · No. No. 87-1933 · Decided December 16, 1987

SUMMARY

The Florida Fourth District Court of Appeal affirmed Larry McMillan’s conviction and ten-year habitual-offender sentence for grand theft. The court held that the habitual offender statute could support a sentence exceeding both the statutory maximum and the presumptive sentencing-guidelines range when valid grounds for departure were stated. It certified a question of great public importance concerning whether *Whitehead v. State* precludes such a sentence.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	STONE; GLICKSTEIN; DELL
JURISDICTION	Florida
DECIDED	December 16, 1987
DOCKET	No. 87-1933
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction for grand theft and a habitual-offender sentence exceeding both the statutory maximum for the offense and the presumptive sentencing-guidelines sentence.
STANDARD OF REVIEW	Appellate review of the legality of a criminal sentence and the trial court's grounds for departure from the sentencing guidelines.
PRECEDENTIAL VALUE	Published Florida district court of appeal decision; certified a question of great public importance.
PARTIES	Larry McMillan v. State of Florida

TOPICS

- sentencing
- sentencing guidelines
- criminal procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- criminal law
- sentencing
- appellate practice

QUESTIONS PRESENTED

1. Whether *Whitehead v. State* precluded use of the habitual-offender statute to impose a sentence exceeding both the statutory maximum and the sentencing-guidelines sentence when the trial court articulated valid departure grounds other than those disapproved in *Whitehead*.
2. Whether the remaining issues raised by the appellant required reversal of the judgment or sentence.

HOLDINGS

1. *Whitehead v. State* did not preclude application of the habitual-offender statute to impose a sentence exceeding the offense's statutory maximum and the presumptive guidelines sentence when the trial court stated valid grounds for departure other than the grounds disapproved in *Whitehead*.

KEY QUOTATIONS

“We agree with the conclusions in these cases and affirm the judgment and sentence.” (516 So. 2d at 1066)

FACTUAL BACKGROUND

McMillan was convicted of grand theft, a third-degree felony carrying a five-year maximum statutory penalty. He was sentenced as a habitual offender under section 775.084(4)(a)3 to ten years' imprisonment, while the guidelines scoresheet provided for a maximum sentence of thirty months. The trial court relied on a continuing and persistent pattern of criminal activity demonstrating the futility of rehabilitation and the commission of the offenses shortly after McMillan's release from prison; his recent criminal history included sexual battery and two burglary convictions involving attempted sexual battery.

PROCEDURAL HISTORY

The trial court convicted McMillan of grand theft and sentenced him as a habitual offender to ten years' imprisonment. The sentence exceeded the five-year statutory maximum for the third-degree felony and the thirty-month guidelines maximum. McMillan appealed, arguing that *Whitehead v. State* invalidated the sentence; the Fourth District affirmed and certified a question of great public importance.

DISPOSITION

affirmed

CASES CITED

- *Williams v. State*, 504 So. 2d 392 (Fla. 1987)
- *Brockington v. State*, 506 So. 2d 495 (Fla. 5th DCA 1987)
- *Shelton v. State*, 510 So. 2d 1068 (Fla. 2d DCA 1987)
- *Harmon v. State*, 506 So. 2d 500 (Fla. 1st DCA 1987)
- *Whitehead v. State*, 498 So. 2d 863 (Fla. 1986)
- *Condiles v. State*, 512 So. 2d 331 (Fla. 3d DCA 1987)
- *King v. State*, 511 So. 2d 1131 (Fla. 4th DCA 1987)

- Hoefert v. State, 509 So. 2d 1090 (Fla. 2d DCA 1987)
- Smith v. Wainwright, 508 So. 2d 768 (Fla. 2d DCA 1987)
- Winters v. State, 500 So. 2d 303 (Fla. 1st DCA 1986)
- Hall v. State, 511 So. 2d 1038 (Fla. 1st DCA 1987)
- Holmes v. State, 502 So. 2d 1302 (Fla. 1st DCA 1987)
- Hester v. State, 503 So. 2d 1342 (Fla. 1st DCA 1987)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-district-court-of-appeal-of-florida-fourth-district/1987/mcmillan-v-state-bxx2q68t>