

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CHARLES JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D03-2928

Opinion filed August 16, 2005.

An appeal from the circuit court for Leon County.

Judge Kathleen F. Dekker.

Nancy A. Daniels, Public Defender, and Kathleen Stover, Assistant Public Defender,
Tallahassee, for Appellant.

Charlie Crist, Attorney General, and Bryan Jordan, Assistant Attorney General, for Appellee.

ON MOTION TO ENFORCE MANDATE

PER CURIAM.

Charles Johnson asks this Court to enforce the mandate by requiring the trial court to allow him to select sentencing under pre-guidelines law or under guidelines pursuant to

section 921.001(4)(b)1, Florida Statutes (2004). We were clear in specifying the applicable guidelines as that provided by the legislature. We specifically noted that the appropriate guidelines had not been established by the legislature at the time the Florida Supreme Court was required to address the issue in Smith v. State, 537 So. 2d 982 (Fla. 1989).

Our decision in Kunkel v. State, 765 So. 2d 244 (Fla. 1st DCA 2000) does not require any different result. Kunkel sought to avoid guidelines because he would be eligible for parole under pre-guidelines law. Furthermore, the "current guidelines" at the time of Kunkel would have been the same as those guidelines provided by the legislature in section 921.001(4)(b)1, Florida Statutes (2004).

The legislature was specific as to which guidelines would apply to the remnants of early guidelines uncertainty, and so was this Court in its previous opinion.

The appellant's motion is granted and the trial court will allow appellant to elect pre-guidelines law or "guidelines enacted effective October 1, 1983," as provided in section 921.011(4)(b)1, Florida Statutes (2004).

BARFIELD, BENTON, and THOMAS, JJ., concur.