

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2012*

**STATE OF FLORIDA,**  
Appellant,

v.

**MICHAEL WASHINGTON,**  
Appellee.

No. 4D10-4189

[April 18, 2012]

DAMOORGIAN, J.

The State of Florida appeals the trial court's final order granting Michael Washington's motion for a downward departure sentence. Washington sought a departure sentence based on, inter alia, his need for adequate mental health treatment. On appeal, the State argues that Washington did not meet his burden to establish that the treatment he required was not available from the Department of Corrections ("DOC"). In our recent opinion in *State v. Chubbuck*, 37 Fla. L. Weekly D582 (Fla. 4th DCA Mar. 7, 2012) (en banc), we receded from our precedent which imposed upon the defendant seeking a departure sentence, the burden to establish by a preponderance of the evidence that treatment was not available from the DOC. *See id.* at D584. Accordingly, our holding in *Chubbuck* is dispositive of the issue in this appeal.

The record in this case reflects that Washington's expert testified that the DOC could provide adequate treatment for Washington. Based upon the fact that the trial court was presented with this evidence and still chose to give a departure sentence, leads us to conclude that there is no reason to remand this case in order to give the State another opportunity to present evidence as to whether the DOC can provide the necessary treatment. *Cf. id.* (reversing and remanding for a new sentencing hearing because "[a]lthough the state had the opportunity to present such evidence at the sentencing hearing, we recognize the possibility that the state did not present such evidence given this court's view of the law at that time").

*Affirmed.*

MAY, C.J., and GROSS, J., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; William Haury, Jr., Judge; L.T. Case No. 09-11739 CF10A.

Pamela Jo Bondi, Attorney General, Tallahassee, and Helene C. Hvizd, Assistant Attorney General, West Palm Beach, for appellant.

Carey Haughwout, Public Defender, and John Pauly, Assistant Public Defender, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***