

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA
December 29, 2004

ANDREW GRIFFIN,)
)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D04-3633

BY ORDER OF THE COURT:

Appellant's motion for certification of conflict is granted in part. The opinion dated November 5, 2004, is withdrawn, and the attached opinion is substituted therefor.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

cc: Andrew Griffin
Attorney General

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ANDREW GRIFFIN,)	
)	
Appellant,)	
)	
v.)	Case No. 2D04-3633
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed December 29, 2004.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Richard A. Luce, Judge.

PER CURIAM.

Affirmed. See Boyd v. State, 880 So. 2d 726 (Fla. 2d DCA 2004). After this court held in Boyd that a claim of vindictive sentencing is not cognizable in a motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a), the Fifth District in Johnson v. State, 877 So. 2d 795 (Fla. 5th DCA 2004),

reversed a circuit court order denying a rule 3.800(a) motion and remanded for consideration of the claim of vindictive sentencing raised in the motion. We certify direct conflict with Johnson.

Affirmed; conflict certified.

DAVIS, KELLY, and VILLANTI, JJ., Concur.