

Supreme Court of Florida

No. SC96400

STATE OF FLORIDA,
Petitioner,

vs.

ROBERT WILLIS BROOKS,
Respondent.

[June 7, 2001]

PER CURIAM.

We initially accepted jurisdiction to review the decision of the Fifth District Court of Appeal in State v. Brooks, 739 So. 2d 1224, 1225 (Fla. 5th DCA 1999), which certified a question to be of great public importance. See art. V, § 3(b)(4), Fla. Const. The State requested that Brooks be consolidated with State v. Rife, 26 Fla. L. Weekly S226 (Fla. Apr. 12, 2001), for purposes of oral argument, and we heard both cases together. In Rife, we addressed a certified question from the Fifth District concerning whether a trial court may impose a downward departure

sentence upon a defendant convicted of committing a sexual battery based upon the minor victim's willing participation. Having answered the certified question in Rife in the affirmative, and having reviewed the certified question in Brooks, we conclude that the certified question in Brooks addresses a narrow question based on the unique facts of that case.¹ Therefore, we find that review in Brooks based on the certified question was improvidently granted and we hereby dismiss the petition for review.

It is so ordered.

SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.
WELLS, C.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

Fifth District - Case No. 5D98-2874

(Seminole County)

Robert A. Butterworth, Attorney General, and Ann M. Phillips, Assistant Attorney
General, Daytona Beach, Florida,

for Petitioner

¹ The certified question in Brooks was "MAY A REASONABLE MISTAKE AS TO THE AGE OF THE VICTIM BE CONSIDERED IN MITIGATION" for purposes of imposing a downward departure sentence upon a defendant convicted of committing a lewd and lascivious act. 739 So. 2d at 1225.

James B. Gibson, Public Defender, and Rosemarie Farrell, Assistant Public
Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Respondent