

Supreme Court of Florida

No. SC96760

SOLOMON WISE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[June 29, 2000]

PER CURIAM.

We have for review Wise v. State, 739 So. 2d 1280 (Fla. 5th DCA 1999), a decision of the Fifth District Court of Appeal citing as controlling authority its opinion in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998), approved in part, disapproved in part, 25 Fla. L. Weekly S367 (Fla. May 11, 2000). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

In Maddox, we recently concluded that a sentence that exceeds the maximum

sentence allowed by statute constitutes a fundamental sentencing error that can be raised on direct appeal during the window period.¹ 25 Fla. L. Weekly at S370. Wise claims that his sentence of eighteen months' probation is illegal because it exceeds the statutory maximum sentence of sixty days permitted for a second-degree misdemeanor. See §§ 322.34(2)(a), 775.082(4)(b), Fla. Stat. (1997); see also State v. Summers, 642 So. 2d 742 (Fla. 1994) (stating that probationary terms are subject to a statutory maximum). The district court should have corrected this error on direct appeal even though it was not preserved for review.

In addition, Wise challenges special conditions of probation that were included in the written probation order but were not orally pronounced. In Maddox, we found that this does not constitute a fundamental error. 25 Fla. L. Weekly at S372. For the reasons expressed in this opinion, we quash the decision below and remand for proceedings consistent with our opinion in Maddox.²

¹In Maddox, we addressed the question of whether unpreserved sentencing errors should be corrected in appeals filed in the window period between the effective date of section 924.051, Florida Statutes (Supp. 1996), and our recent amendment to Florida Rule of Criminal Procedure 3.800(b) in Amendments to Florida Rules of Criminal Procedure 3.111(e) & 3.800 & Florida Rules of Appellate Procedure 9.020(h), 9.140, & 9.600, 24 Fla. L. Weekly S530 (Fla. Nov. 12, 1999), reh'g granted, 25 Fla. L. Weekly S37 (Fla. Jan. 13, 2000). The appeal in this case falls within the window period discussed in Maddox.

²We decline to address the other issues raised by Wise that are not the basis of our jurisdiction. See, e.g., Wood v. State, 750 So. 2d 592, 595 n.3 (Fla. 1999); McMullen v. State, 714 So. 2d 368, 373 (Fla. 1998).

It is so ordered.

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

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

Application for Review of the Decision of the District Court of Appeal -
Direct Conflict

Fifth District - Case No. 5D98-3123

(Brevard County)

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for Petitioner

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