



KENNETH GAMBLE v. STATE FLORIDA

355 So. 2d 494 (1978) | Cited 0 times | District Court of Appeal of Florida | February 28, 1978

Per Curiam.

On this appeal from conviction on two counts of robbery, for which the appellant was sentenced to imprisonment for ten years and five years, respectively, at hard labor, the appellant challenges provisions of the sentence entered on March 30, 1977 which expressly precluded eligibility for parole for three years [under Section 775.087(2), Florida Statutes (1975)] and which provided for imprisonment at hard labor. In a motion filed by the State, as appellee, it is conceded that on the facts of the case the mandatory three-year sentence provision was not applicable, citing *Earnest v. State*, 351 So.2d 957 (Fla.1977); *Johnson v. State*, 349 So.2d 1190 (Fla.1977), and that it was incorrect for the sentence to provide for hard labor, citing *Smith v. State*, 354 So.2d 477 (Fla. 3d DCA 1978), Case No. 77-72, opinion filed January 31, 1978; *Wells v. State*, 354 So.2d 1221 (Fla.1978). [See also: *Speller v. State*, 305 So.2d 231, 232 (Fla. 2d DCA 1974).]

Accordingly, the sentences thus imposed are hereby amended by striking therefrom the provision excluding eligibility for parole for three years and the provision that the imprisonment shall be at hard labor, as contained therein. The judgment is affirmed, and the sentences as thus amended are affirmed.

It is so ordered.

