

Supreme Court of Florida

No. 76,326

LOUIS B. GASKIN, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[March 18, 1993]

BARKETT, C.J.

We have Gaskin v. State, 591 So. 2d 917 (Fla. 1991),
vacated, 112 S. Ct. 3022, 120 L. Ed. 2d 894 (1992), on remand
from the United States Supreme Court for further consideration in
light of Espinosa v. Florida, 112 S. Ct. 2926, 120 L. Ed. 2d 854
(1992).¹

The facts of this case are fully set forth in our previous
opinion. The United States Supreme Court in Espinosa found
insufficient our former jury instruction on the "especially

¹ We have jurisdiction pursuant to article V, section 3(b)(1),
Florida Constitution.

heinous, atrocious, or cruel" aggravating factor.² We must determine what effect, if any, the reading of that same instruction had in Gaskin's case.

We find that although Gaskin argued at trial against the instruction for the "cold, calculated and premeditated" aggravating circumstance,³ he did not object to the vagueness of the especially heinous, atrocious, or cruel aggravating circumstance instruction at trial, nor did he request a special instruction for this circumstance. Thus, the issue of unconstitutional vagueness as to the jury instruction struck down in Espinosa has not been preserved for review. ~~See~~ e.g., Ragsdale v. State, 609 So. 2d 10 (Fla. 1992).

In addition, were we to address the issue, the reading of the insufficient heinous, atrocious, or cruel aggravating circumstance instruction as it relates to the sentence for the **murder** of Georgette Sturmfels would be harmless error beyond a reasonable doubt, because the reading of this vague instruction could not have affected the jury's recommendation of death in this case. Therefore, for the reasons stated here and in our earlier decision, we again affirm the two death sentences.

It is so ordered.

OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

² See § 921.141(5)(h), Fla. Stat. (1987).

³ See § 921.141(5)(i), Fla. Stat. (1987).

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

An Appeal from the Circuit Court in and for Flagler County,

Kim C. Hammond, Judge - Case No. 90-01

James B. Gibson, Public Defender and Christopher S. Quarles,
Assistant Public Defender, Chief, Capital Appeals, Seventh
Judicial Circuit, Daytona Beach, Florida,

for Appellant

Robert A. Butterworth, Attorney General; Carolyn M. Snurkowski,
Assistant Attorney General, Tallahassee, Florida, and Kellie A.
Nielan, Assistant Attorney General, Daytona Beach, Florida,

for Appellee