

# Supreme Court of Florida

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No. SC93097

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**SHAWN FITZGERALD,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[June 22, 2000]

PER CURIAM.

We have for review the decision in Fitzgerald v. State, 708 So. 2d 690 (Fla. 5th DCA 1998), in which the Fifth District cited 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). We quash the decision below and remand for the Fifth District to consider this case in light of our opinion in Maddox.

It is so ordered.

HARDING, C.J., and 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. 5D97-1890

(Brevard County)

James B. Gibson, Public Defender and Kenneth Witts, Assistant Public Defender,  
Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

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Daytona Beach, Florida,

for Respondent