

Supreme Court of Florida

No. 94,677

DONALD FRANK SWIHART,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[December 16, 1999]

PARIENTE, J.

We have for review the opinion in Swihart v. State, 721 So. 2d 810 (Fla. 5th DCA 1998), which certified conflict with the opinions in State v. Holland, 689 So. 2d 1268 (Fla. 1st DCA 1997), and State v. Perry, 716 So. 2d 327 (Fla. 2nd DCA 1998). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. For the reasons expressed in our opinion in Hayes v. State, 24 Fla. L. Weekly S467 (Fla. Oct. 7, 1999), the decision of the Fifth District is hereby quashed. We remand to the district court for proceedings consistent with this opinion.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, 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 - Certified
Direct Conflict of Decisions

Fifth District - Case No. 98-645

(Brevard County)

James B. Gibson, Public Defender, and Rebecca M. Becker, Assistant Public
Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

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