

Supreme Court of Florida

No. SC00-2382

ELLIS D. DOWNS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[August 21, 2003]

PER CURIAM.

We have for review a decision of the Second District Court of Appeal, in which the court certified as a question of great public importance the same question certified by that court and answered in Burgess v. State, 831 So. 2d 137 (Fla. 2002). See Downs v. State, 768 So. 2d 1149 (Fla. 2d DCA 2000). We have jurisdiction. See Art. V, §3(b)(4), Fla. Const. We accept jurisdiction in this case, quash the decision of the Second District, and remand for reconsideration in light of our decision in Burgess.

It is so ordered.

ANSTEAD, C.J., and PARIENTE, LEWIS, and QUINCE, JJ., concur.
CANTERO, J., dissents with an opinion, in which WELLS and BELL, JJ., concur.

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

CANTERO, J., dissenting.

I would decline to exercise jurisdiction. The argument that petitioner presented, in response to this Court's order directing him to show cause why our decision in Burgess v. State, 831 So. 2d 137 (Fla. 2002), should not control the outcome of this case and why the Court should not decline to exercise jurisdiction in this case, was never presented to either the trial court or the Second District. Therefore, I would decline to exercise jurisdiction.

WELLS and BELL, JJ., concur.

Application for Review of the Decision of the District Court of Appeal - Certified
Great Public Importance

Second District - Case No. 2D00-1076

(Polk County)

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Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Robert J. Krauss, Senior Assistant Attorney General, Chief of Criminal Law, and Ronald Napolitano, Assistant Attorney General, Tampa, Florida,

for Respondent