

# Supreme Court of Florida

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No. SC04-1331

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**STATE OF FLORIDA,**  
Petitioner,

vs.

**EUSEBIO HERNANDEZ,**  
Respondent.

[September 1, 2005]

PER CURIAM.

We initially accepted jurisdiction to review State v. Hernandez, 875 So. 2d 1271 (Fla. 3d DCA 2004), a decision alleged to be in express and direct conflict with State v. Palmore, 495 So. 2d 1170 (Fla. 1986), State v. Kleinfeld, 587 So. 2d 592 (Fla. 4th DCA 1991), and State v. Richardson, 621 So. 2d 752 (Fla. 5th DCA 1993). See art. V, § 3(b)(3), Fla. Const. Upon further consideration, we have now determined that we should exercise our discretion and discharge jurisdiction. Accordingly, this review proceeding is hereby dismissed.

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, and CANTERO,  
JJ., concur.  
BELL, J., dissents.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Application for Review of the Decision of the District Court of Appeal - Direct  
Conflict of Decisions

Third District - Case No. 3D03-1187

(Dade County)

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Richard L. Polin,  
Bureau Chief, Criminal Appeals, Miami, Florida,

for Petitioner

Bennett H. Brummer, Public Defender and Howard K. Blumberg, Assistant Public  
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for Respondent