

Supreme Court of Florida

No. SC05-1486

TOMESHA MARIE HOWARD,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[April 3, 2008]

PER CURIAM.

We have for review State v. Howard, 909 So. 2d 390 (Fla. 1st DCA 2005), in which the First District Court of Appeal expressly relied upon Hilton v. State, 901 So. 2d 155 (Fla. 2d DCA 2005) (en banc), quashed, 961 So. 2d 284 (Fla. 2007), as authority, and certified conflict with State v. Burke, 902 So. 2d 955 (Fla. 5th DCA 2005), review dismissed, No. SC05-1173 (Fla. Apr. 3, 2008). At the time the First District issued its decision in Howard, both Hilton and Burke were pending review in this Court. We have jurisdiction. See art. V, § 3(b)(3)-(4), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

We stayed proceedings in this case pending our disposition of Hilton. See Hilton v. State, 961 So. 2d 284 (Fla. 2007) (quashing the Second District Court of Appeal's decision in Hilton, upon which the First District had relied in Howard). When our decision in Hilton became final, we issued an order directing respondent to show cause why we should not exercise jurisdiction, quash the Howard decision, and remand for reconsideration in light of our decision in Hilton. Respondent has conceded that it cannot show such cause.

We accordingly grant the petition for review in the present case. The decision under review is quashed and this matter is remanded to the First District for reconsideration upon application of this Court's decision in Hilton.

It is so ordered.

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

First District - Case No. 1D04-5295

(Alachua County)

Nancy Daniels, Public Defender, and David P. Gaudin, Assistant Public Defender,
Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Bill McCollum, Attorney General, Trisha Meggs Pate, Bureau Chief, and Bryan Jordan, Assistant Attorneys General, Tallahassee, Florida,

for Respondent