

Supreme Court of Florida

No. SC05-327

EDWARD BYRD,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[October 19, 2006]

PER CURIAM.

We have for review Byrd v. State, 893 So. 2d 620 (Fla. 2d DCA 2005), in which the Second District Court of Appeal cited Garcia v. State, 854 So. 2d 758 (Fla. 2d DCA 2003), quashed, 901 So. 2d 788 (Fla. 2005), and, as it had done in Garcia, certified conflict with the First District Court of Appeal's decision in Goodman v. State, 839 So. 2d 902 (Fla. 1st DCA 2003), approved by Garcia v. State, 901 So. 2d 788 (Fla. 2005). At the time the Second District Court of Appeal issued its decision in Byrd, Garcia was 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).

In Garcia v. State, 901 So. 2d 788 (Fla. 2005), this Court quashed Garcia and approved Goodman. In response to an order of this Court dated January 27, 2006, the respondent/State has acknowledged that it “cannot show cause why this Court should not accept jurisdiction and remand for reconsideration in light of Garcia.” We accordingly grant the petition for review in the present case. The decision under review is quashed and this matter is remanded to the Second District Court of Appeal for reconsideration upon application of this Court’s decision in Garcia.

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

Second District - Case No. 2D03-2756

(Polk County)

James Marion Moorman, Public Defender and William L. Sharwell, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Chandra Waite Dasrat, Assistant Attorney General, Tampa, Florida,

for Respondent