

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC06-2247

MICHAEL DENLINGER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

CHARLES J. CRIST, JR.  
Attorney General  
Tallahassee, Florida

CELIA TERENCE  
Assistant Attorney General  
Bureau Chief, West Palm Beach  
Florida Bar No. 656879

MONIQUE E. L'ITALIEN  
Assistant Attorney General  
Florida Bar No. 458198  
1515 N. Flagler Dr., Suite 900  
West Palm Beach, Florida 33401  
Telephone: 561-837-5000

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS.....ii

PRELIMINARY STATEMENT .....iv

STATEMENT OF THE CASE AND FACTS .....1

SUMMARY OF THE ARGUMENT.....2

ARGUMENT.....3

THIS COURT DOES NOT HAVE JURISDICTION  
OVER THIS CASE.

CONCLUSION.....5

CERTIFICATE OF SERVICE.....6

CERTIFICATE OF FONT COMPLIANCE.....6

TABLE OF AUTHORITIES

**CASES**

*Denlinger v. State*, ---, So. 2d -- 2006 WL. 2872562 (Fla. 4th DCA October 11, 2006) ..... 1

*Dodi Publishing Co. v. Editorial America*, 385 So. 2d 1369 (Fla. 1980)..... 3

*Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987) ..... 3, 4

*Jollie v. State*, 405 So. 2d 418 (Fla. 1981) ..... 4

*Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) . 1, 2, 3, 4

**STATE RULES**

Rule 9.210 ..... 6

PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. Petitioner was the appellant and Respondent was the appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

STATEMENT OF THE CASE AND FACTS

Respondent does not accept Petitioner's Statement of the Case and Facts. The pertinent history and facts are set out in the decision of the lower tribunal, a copy of which is attached as Appendix A and which can also be found at *Denlinger v. State*, --- So. 2d ----, 2006 WL 2872562 (Fla. 4th DCA October 11, 2006). The decision reads as follows:

Affirmed. *Yisrael v. State*, 31 Fla. L. Weekly D2178, --- So.2d ----, 2006 WL 2355519 (Fla. 4th DCA August 16, 2006).

*Id.*

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction over this case. Here, the Fourth District Court of Appeal per curiam affirmed Petitioner's conviction and sentence and merely cited to its recent opinion of *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006).

This Court does not have jurisdiction to review a per curiam affirmance that merely cites a precedent.

Accordingly, this Court should decline to accept jurisdiction over the instant case.

ARGUMENT

THIS COURT DOES NOT HAVE  
JURISDICTION OVER THIS CASE.

Petitioner asks this Court to accept jurisdiction in this case, however, this Court does not have jurisdiction. In the instant opinion by the Fourth District Court of Appeal, the district court per curiam affirmed Petitioner's conviction and sentence and merely referenced its decision in *Yisrael v. State*.<sup>1</sup> This Court does not have jurisdiction to review a per curiam affirmance that merely cites a precedent, even if it could be argued that the precedent is in conflict with a decision of another district court of appeal or of the supreme court. *Dodi Publishing Co. v. Editorial America*, 385 So. 2d 1369 (Fla. 1980).

Moreover, in support of his argument for jurisdiction, Petitioner contends *Yisrael* is pending review. Petitioner is mistaken. This Court has previously indicated that the phrase "pending review" means that this Court must have accepted the cited case for review. See *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987). The mere fact that a case is pending on a notice to invoke discretionary jurisdiction, not yet acted upon by this Court, does not give rise to jurisdiction. *Id.* Compare

---

<sup>1</sup> 938 So. 2d 546 (Fla. 4<sup>th</sup> DCA 2006).

*Jollie v. State*, 405 So. 2d 418 (Fla. 1981)(*Jollie's* reference to controlling authority that is pending review refers to a case in which the petition for jurisdictional review has been granted and the case is pending for disposition on the merits.)

According to this Court's on-line docket, a notice to invoke has been filed in *Yisrael*, however, this Court has not yet acted upon it which in turn does not give rise to jurisdiction. *Id.* Accordingly, this Court should decline to accept jurisdiction over the instant case.



CONCLUSION

In conclusion, the State respectfully requests this Court  
DECLINE to accept jurisdiction to review the instant case.

Respectfully submitted,

CHARLES J. CRIST, JR.  
Attorney General  
Tallahassee, Florida

---

CELIA TERENCE  
Assistant Attorney General  
Bureau Chief

---

MONIQUE E. L'ITALIEN  
Assistant Attorney General  
Florida Bar No. 458198  
1515 N. Flagler Dr., Suite 900  
W. Palm Beach, FL 33401-3432  
(561) 837-5000  
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished by courier to Marcy Allen, Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, FL 33401 this 12th day of December, 2006.

---

MONIQUE E. L'ITALIEN

CERTIFICATE OF FONT COMPLIANCE

I hereby certify that this document, in accordance with Rule 9.210 of the Florida Rules of Appellate Procedure, has been prepared with 12 point Courier New type.

---

MONIQUE E. L'ITALIEN

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC06-2247

MICHAEL DENLINGER

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S INDEX TO APPENDIX AND APPENDIX

Opinion.....A-1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished by courier to Marcy Allen Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, FL 33401 this 12<sup>th</sup> day of December, 2006.

\_\_\_\_\_  
MONIQUE E. L'ITALIEN