

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC06-2333

DAVID BROWN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward 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.

STATEMENT OF THE CASE AND FACTS

The entire opinion states:

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

Brown v. State, 940 So.2d 500 (Fla. 4th DCA 2006).

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 that is not pending review before this Court.

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*.¹ 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 *Jollie v. State*, 405 So. 2d 418 (Fla. 1981)(*Jollie's* reference

¹ 938 So. 2d 546 (Fla. 4th DCA 2006).

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 as of the service date of this brief, a notice to invoke has been filed in *Yisrael*. However, this Court has not yet acted upon that notice so there is no 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,

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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 Elisabeth Porter, Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, FL 33401 this 12th day of December, 2006.

James J. Carney

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.

James J. Carney