

# Supreme Court of Florida

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No. SC07-1178

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**RICHARD ARTHUR BERTKE,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[January 15, 2009]

LEWIS, J.

We have for review Bertke v. State, 949 So. 2d 1118 (Fla. 5th DCA 2007), in which the Fifth District Court of Appeal expressly relied upon the Third District Court of Appeal's decision in Martinez v. State, 933 So. 2d 1155 (Fla. 3d DCA 2006), approved, 981 So. 2d 449 (Fla. 2008). At the time the Fifth District issued its decision in Bertke, Martinez was pending review in this Court. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

We stayed proceedings in this case pending our disposition of Martinez. See Martinez v. State, 981 So. 2d 449 (Fla. 2008) (approving the result—but not the

reasoning—of the Third District in Martinez, upon which the Fifth District relied in Bertke). When our decision in Martinez became final, we issued an order directing respondent to show cause why we should not accept jurisdiction, quash the Bertke decision, and remand for reconsideration in light of our decision in Martinez. Upon consideration of the responses of the parties, along with petitioner’s previously filed jurisdictional brief, we accept jurisdiction.

We accordingly grant the petition for review in the present case. The decision under review is quashed, and this matter is remanded to the Fifth District Court of Appeal for reconsideration upon application of this Court’s decision in Martinez.

It is so ordered.

QUINCE, C.J., WELLS, PARIENTE, CANADY, and POLSTON, JJ., and ANSTEAD, Senior Justice, 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 – Direct Conflict of Decisions

Fifth District - Case No. 5D06-1347

(St. Johns County)

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for Petitioner

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