

Supreme Court of Florida

No. SC07-1778

STATE OF FLORIDA,
Petitioner,

vs.

TROY MCJIMSEY,
Respondent.

[January 15, 2009]

LEWIS, J.

We have for review McJimsey v. State, 959 So. 2d 1257 (Fla. 4th DCA 2007), which expressly and directly conflicts with 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). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

We stayed proceedings in this case pending our disposition of Martinez. When our decision in Martinez became final, we issued an order directing respondent to show cause why we should not exercise jurisdiction, quash the McJimsey decision, and remand for reconsideration in light of our decision in

Martinez. Upon consideration of the responses of the parties, along with the parties' previously filed jurisdictional briefs, we have determined to 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 Fourth 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

Fourth District - Case No. 4-D06-2336

(Broward County)

Bill McCollum, Attorney General, Tallahassee, Florida, and Celia Terenzio, Bureau Chief, and Daniel P. Hyndman, Assistant Attorneys General, West Palm Beach, Florida,

for Petitioner

Carey Haughwout, Public Defender, and David John McPherrin, Assistant Public Defender, Fifteenth Judicial Circuit, West Palm Beach, Florida,

for Respondent