

Supreme Court of Florida

No. SC07-2247

STATE OF FLORIDA,
Petitioner,

vs.

DAVID DWAYNE BROWN,
Respondent.

[February 26, 2009]

PER CURIAM.

We have for review the decision of the Third District Court of Appeal in Brown v. State, 967 So. 2d 236 (Fla. 3d DCA 2007), which expressly and directly conflicts with the decision of the Fourth District Court of Appeal in Garzon v. State, 939 So. 2d 278 (Fla. 4th DCA 2006), approved, 980 So. 2d 1038 (Fla. 2008). At the time the Third District issued its decision in Brown, Garzon was pending review in this Court. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

We stayed proceedings in this case pending disposition of Garzon, in which we ultimately approved the Fourth District's underlying Garzon decision. See Garzon v. State, 980 So. 2d 1038 (Fla. 2008). We thereafter issued an order in this

case directing respondent to show cause why we should not accept jurisdiction, summarily quash the decision being reviewed, and remand for reconsideration in light of our decision in Garzon. Upon reviewing respondent's response and petitioner's reply thereto, we issued an order accepting jurisdiction and ordering merits briefing. Petitioner thus filed its initial brief and respondent his answer brief, whereupon petitioner filed a motion to strike respondent's answer brief.

In considering the motion, the Court had occasion to review anew the cases at issue and the parties' response and reply to our order to show cause. Upon reevaluation, we have determined that merits briefing is unnecessary and that the Court should proceed, as it originally intended, to summarily quash the decision being reviewed and remand for reconsideration in light of our decision in Garzon. We have already accepted jurisdiction by order. The decision under review is quashed, and this matter is remanded to the Third District for reconsideration upon application of this Court's decision in Garzon. Petitioner's motion to strike respondent's answer brief is accordingly denied as moot.

It is so ordered.

QUINCE, C.J., and WELLS, PARIENTE, LEWIS, CANADY, POLSTON, and LABARGA, 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 - Direct Conflict of Decisions

Third District - Case No. 3D04-2348

(Dade County)

Bill McCollum, Attorney General, Tallahassee, Florida, Richard L. Polin, Bureau Chief, and Ansley E. Peacock, Assistant Attorneys General, Miami, Florida,

for Petitioner

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