

Supreme Court of Florida

No. SC08-6

GARY M. DIRK,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 1, 2012]

PER CURIAM.

We have for review Dirk v. State, 969 So. 2d 1170 (Fla. 5th DCA 2007), in which the Fifth District Court of Appeal certified conflict with Isaac v. State, 911 So. 2d 813 (Fla. 1st DCA 2005). We have jurisdiction. See art. V, § (3)(b)(4), Fla. Const.

We stayed proceedings in this case pending disposition of Isaac. See State v. Isaac, 66 So. 3d 912 (Fla. 2011). We thereafter issued an order directing petitioner to show cause why this Court's decisions in State v. Fleming, 61 So. 3d 399 (Fla. 2011), and State v. Isaac, 66 So. 3d 912 (Fla. 2011), are not controlling in

this case and why the Court should not decline to exercise jurisdiction in this case.

Upon review of the responses, we have determined to exercise jurisdiction.

Accordingly, we grant the petition for review in the present case and quash the decision under review. This matter is therefore remanded to the Fifth District Court of Appeal for further proceedings.

It is so ordered.

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

Fifth District - Case No. 5D06-3770

(Brevard County)

James S. Purdy, Public Defender, Ailene S. Rogers and James R. Wulchak,
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for Petitioner

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for Respondent