

Supreme Court of Florida

No. SC09-2023

HAROLD GOVONI,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[July 7, 2011]

CANADY, C.J.

We have for review Govoni v. State, 17 So. 3d 809 (Fla. 4th DCA 2009), in which the Fourth District Court of Appeal determined that the trial court did not err in denying Govoni's motion to dismiss filed pursuant to section 776.032(1), Florida Statutes (2008), Florida's "Stand Your Ground" law. After reasoning that the trial court must deny such a motion where there are disputed issues of material fact, the Fourth District denied Govoni's petition for a writ of prohibition and certified conflict with Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

We stayed proceedings in this case pending disposition of Dennis v. State, 51 So. 3d 456 (Fla. 2010), in which we determined that where a criminal defendant files a motion to dismiss on the basis of section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity. In so holding, this Court approved the reasoning of Peterson on the conflict issue.

Following that decision, we issued an order directing the State to show cause why this Court should not exercise jurisdiction in the instant case, summarily quash the decision on review, and remand for reconsideration in light of Dennis. The State has filed a response conceding that “given the procedural posture of this case . . . this cause should be remanded for reconsideration.”

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 for reconsideration upon application of this Court’s decision in Dennis.

Furthermore, Govoni’s motion to extend time for serving his jurisdictional brief is hereby denied as moot.

It is so ordered.

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

Fourth District - Case No. 49-23

(Palm Beach County)

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for Petitioner

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