

Supreme Court of Florida

No. SC10-1405

KEITH JACKSON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[May 26, 2011]

CANADY, C.J.

We have for review Jackson v. State, No. 4D10-2100 (Fla. 4th DCA Jun. 15, 2010), in which the Fourth District Court of Appeal concluded that the trial court did not depart from the essential requirements of law. The Fourth District relied upon its prior decision Dennis v. State, 17 So. 3d 305 (Fla. 4th DCA 2009). At the time the Fourth District issued Jackson, Dennis 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 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, Florida Statutes (2006), the trial court should decide the factual question of the applicability of the statutory immunity. In so holding, we disapproved the Fourth District’s reasoning. We then issued an order directing the State to show cause why this Court should not exercise jurisdiction in the instant case, summarily quash the order 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 instant case. The order under review is quashed, and this matter is remanded to the Fourth District for reconsideration upon application of this Court’s decision in Dennis.

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 - Direct
Conflict of Decisions

Fourth District - Case No. 4D10-2100

(Broward County)

Leonard Scott Feuer of Dell and Schaefer, Chartered, Hollywood, Florida,

for Petitioner

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Melanie Dale
Surber, Assistant Attorney General, West Palm Beach, Florida,

for Respondent