

# Supreme Court of Florida

---

No. SC10-1881

---

**DAVON FRANCIS,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[October 27, 2011]

LABARGA, J.

We have for review Francis v. State, 22 So. 3d 788 (Fla. 3d DCA 2009), in which the Third District Court of Appeal cited as controlling authority the Second District Court of Appeal's decision in Zeigler v. State, 18 So. 3d 1239 (Fla. 2d DCA 2009). Zeigler was stayed pending this Court's decision in State v. Montgomery, 39 So. 3d 252 (Fla. 2010), and we subsequently quashed and remanded Zeigler for reconsideration in light of Montgomery. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

Based on the district court's reliance on Zeigler in the present case, we accept jurisdiction and grant the petition for review. The decision under review is quashed, and this matter is remanded to the Third District Court of Appeal for reconsideration upon application of our decision in Montgomery.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, 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

Third District - Case No. 3D07-2761

(Dade County)

Carlos J. Martinez, Public Defender, and Marti Rothenberg, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida,

for Petitioner

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, Richard L Polin, Bureau Chief, and Linda S. Katz, Assistant Attorneys General, Miami, Florida,

for Respondent