

# Supreme Court of Florida

WEDNESDAY, FEBRUARY 11, 2009

CASE NO.: SC06-1173

Lower Tribunal No(s): 1D05-3411

STATE OF FLORIDA

vs. CHRISTIAN FLEMING

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Petitioner(s)

Respondent(s)

The Court exercises its jurisdiction and grants review in this case. Oral argument will be set by separate order. Counsel for the parties will be notified of the oral argument date approximately sixty days prior to oral argument.

Petitioner's initial brief on the merits shall be served on or before March 9, 2009; respondent's answer brief on the merits shall be served twenty days after service of petitioner's brief on the merits; and petitioner's reply brief on the merits shall be served twenty days after service of respondent's brief on the merits. The parties are specifically directed to address the following issue in their respective briefs: Whether Apprendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 542 U.S. 296 (2004), apply to resentencing proceedings held after Apprendi issued where the resentencing was final after Blakely issued, in cases in which the convictions were final before Apprendi issued. Please file an original and seven copies of all briefs.

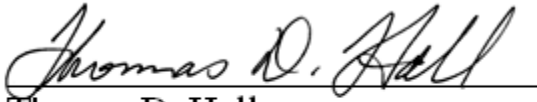
In our order of January 9, 2008 (which the present order supersedes and replaces as to briefing), we specifically directed the parties to address the issue of whether any sentencing factor alleged to violate Apprendi and/or Blakely is harmless beyond a reasonable doubt under Galindez v. State, 955 So. 2d 517 (Fla. 2007). However, upon further consideration, the parties are specifically directed to not address this issue. Petitioner's motion to compel service of copies of the

supplemental record upon both parties is hereby accordingly denied.

Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84, dated September 13, 2004, counsel are directed to transmit a copy of all briefs in an electronic format as required by the provisions of that order.

QUINCE, C.J., WELLS, PARIENTE, LEWIS, and CANADY, JJ., concur.  
POLSTON, J., recused. LABARGA, J., did not participate.

A True Copy  
Test:

  
Thomas D. Hall  
Clerk, Supreme Court



vm  
Served:

CHRISTINA N. SEIFERT  
CHRISTINE A. GUARD  
TRISHA MEGGS PATE  
DAVID A. DAVIS