

IN THE SUPREME COURT OF FLORIDA

MARK DEVONE STALLWORTH,

Petitioner,

v.

CASE NO. SC12-14

L.T. No. 1D11-4711

STATE OF FLORIDA,

Respondent

ON PETITION FOR DISCRETIONARY REVIEW  
OF A DECISION OF THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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**PETITIONER'S BRIEF ON JURISDICTION**

**I. PRELIMINARY STATEMENT**

Mark Devone Stallworth was the defendant in the trial court and the appellant before the First District Court of Appeal. He will be referred to herein by name.

The opinion of the First District Court is Stallworth v. State, \_\_ So.3d \_\_ (Fla. 1<sup>st</sup> DCA December 9, 2011), and is attached as an appendix to this brief.

## II. STATEMENT OF THE CASE AND FACTS

Stallworth challenged his drug possession conviction as being unconstitutional. The First District rejected this claim expressly citing Flagg v. State, 74 So.3d 138 {Fla. 1<sup>st</sup> DCA 2011}.

### III. SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review decisions of the district court which cite as controlling authority a decision that is pending review in the Supreme Court. Jollie v. State, 405 So.2d 418 (Fla. 1981) . The decision in Flagg v. State, infra, cited by the First District in their per curiam affirmed decision, is presently pending in this Court. Flagg v. State, SC11-2282 (proceedings stayed pending disposition of State v. Adkins, Case No. SC11-1878) . Since Flagg is pending before this Court, this court has jurisdiction to review the present case.

#### IV. ARGUMENT

**ISSUE PRESENTED:**

**THIS COURT SHOULD ACCEPT JURISDICTION BECAUSE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN STALLWORTH V. STATE, \_\_\_ SO.3D \_\_\_ (FLA. 1<sup>ST</sup> DCA DECEMBER 9, 2011) CITES AS AUTHORITY A DECISION PENDING BEFORE THIS COURT.**

The District Court, in affirming Stallworth's conviction, cited Flagg v. State, 74 So.3d 138 (Fla. 1<sup>st</sup> DCA 2011). The decision in Flagg is presently pending in this Court. Flagg v. State, SC11-2282.

Pursuant to Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court has jurisdiction to exercise its discretion when a district court's per curiam opinion cites as authority a decision that is pending review in this Court. Since Flagg is currently before this Court, the court should accept jurisdiction in this case as well.

## V. CONCLUSION

Based on the foregoing argument and supporting authority, this Court should exercise its discretion and accept jurisdiction to review the decision of the First District which expressly cites as controlling authority a decision that is presently pending before this court.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Giselle Lylen, Assistant Attorney General, Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, at Criminalappealsintake@myfloridalegal.com as agreed by the parties, and by U.S. mail to appellant, Mark Stallworth, 189 E. Highland Dr., Pensacola, FL. 32505, on this 6th day of January, 2012.

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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APPENDIX TO

PETITIONER'S BRIEF ON JURISDICTION

Stallworth v. State, \_ So.3d  
(Fla. 1<sup>st</sup> DCA December 9, 2011)

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA**

**MARK DEVONE  
STALLWORTH,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

**NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED**

**CASE NO. 1D10-4711**

\_\_\_\_\_ /

**Opinion filed December 9,2011.**

**An appeal from the Circuit Court for Escambia County.  
Jan Shackelford, Judge,**

**Nancy A. Daniels, Public Defender and Glenna Joyce Reeves, Assistant Public  
Defender, Tallahassee, for Appellant**

**Pamela Jo Bondi, Attorney General and Giselle D. Lysten, Assistant Attorney  
General, Tallahassee, for Appellee.**

**PER CURIAM. Affirmed. See Flagg v. State. So. 3d \_\_\_\_\_, 36 Fla. L.**

**Weekly D2276,2011 WL 4865137 (Fla. 1st DCA Oct. 13,2011).**

**BENTON, C J., CLARK, and MARSTILLER, JJ., CONCUR.**