

IN THE SUPREME COURT OF FLORIDA

FREDERICK JOHNSON,

Petitioner,

v.

CASE NO. SC12-58

L.T. No. 1D11-1972

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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TABLE OF CONTENTS

| | <u>PAGE (S)</u> |
|---|-----------------|
| TABLE OF CONTENTS | i |
| TABLE OF AUTHORITIES | ii |
| PRELIMINARY STATEMENT | 1 |
| STATEMENT OF THE CASE AND FACTS | 2 |
| SUMMARY OF THE ARGUMENT | 3 |
| ARGUMENT | 4 |
| ISSUE PRESENTED: THIS COURT SHOULD ACCEPT JURISDICTION BECAUSE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN JOHNSON V. STATE, ___ SO. 3D ___ (FLA. 1 ST DCA DECEMBER 13, 2011) CITES AS AUTHORITY A DECISION PENDING BEFORE THIS COURT. | 4 |
| CONCLUSION | 5 |
| CERTIFICATE OF SERVICE | 6 |
| CERTIFICATE OF COMPLIANCE | 6 |
| APPENDIX | |

TABLE OF AUTHORITIES

PAGE(S)

CASES

Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011) 2-4

Johnson v. State, ____ So. 3d ____
(Fla. 1st DCA December 13, 2011) 1

Jollie v. State, 405 So. 2d 418 (Fla. 1981) 3, 4

State v. Adkins, Case No. SC11-1878) 3

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STATE OF FLORIDA,

Respondent

_____ /

PETITIONER'S BRIEF ON JURISDICTION I.

PRELIMINARY STATEMENT

Frederick Johnson 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 Johnson v. State, __ So.3d __ (Fla. 1st DCA December 13, 2011), and is attached as an appendix to this brief.

II. STATEMENT OF THE CASE AND FACTS

Johnson challenged his drug possession conviction as being unconstitutional. The First District rejected this claim expressly citing Flaaa v. State, 74 So.3d 138 (Fla. 1st 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 JOHNSON V. STATE, ___ SO.3D ___ (FLA. 1ST DCA DECEMBER 13, 2011)

CITES AS AUTHORITY A DECISION PENDING BEFORE THIS COURT.

The District Court, in affirming Johnson's conviction, cited Flaaa v. State, 74 So.3d 138 (Fla. 1st DCA 2011). The decision in Flaaa 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 Charmaine Millsaps, 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 Frederick Johnson, #A50404, Bay C.F., 5400 Bayline Dr., Panama City, FL 32404, on this 18th 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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STATE OF FLORIDA,

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CASE NO. SC12-58

L.T. No. 1D11-1972

APPENDIX TO

PETITIONER'S BRIEF ON JURISDICTION

Johnson v. State, _ So. 3d _
(Fla. 1st DCA December 13, 2011)

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

FREDERICK JOHNSON,

Appellant,

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

CASE NO. 1D11-1972

STATE OF FLORIDA,

Appellee.

Opinion filed October 31,2011.

An appeal from the Circuit Court for Okaloosa County.
John T. Brown, Judge.

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

Pamela Jo Bondi, Attorney General, and Charmaine M. Millsaps, Assistant
Attorney General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. See Williams v. State, 45 So. 3d 14 (Fla. 1st DCA
2010); Johnson v. State. 37 So. 3d 975 (Fla. 1st DCA 2010); Harris v. State. 932

So. 2d

551 (Fla. 1st DCA 2006): see also Flags v. State, ID1 1-2372, 2011 WL 4865137

(Fla. 1st DCA Oct. 13,2011).

DAVIS, VAN NORTWICK, and THOMAS, JJ., CONCUR.