

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

SHAWN LAMONT BLACK,

Petitioner,

v.

CASE NO. SC12-154
L.T. No. 1D11-1262

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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IN THE SUPREME COURT OF FLORIDA

SHAWN LAMONT BLACK,

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v.

CASE NO. SC12-154

L.T. No. 1D11-1262

STATE OF FLORIDA,

Respondent

_____ /

PETITIONER'S BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

Shawn Lamont Black 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 Black v. State.
___ So. 3d ___ (Fla. 1st DCA January 24, 2012), and is attached as an appendix to this brief.

II. STATEMENT OF THE CASE AND FACTS

Shawn Lamont Black challenged his drug possession convictions under Chapter 893, Florida Statutes, because unconstitutional. Specifically, Black contended that his drug offense convictions were void as unconstitutional because the mens rea requirement of the statute was eliminated by Section 893.101, Florida Statutes, thereby making the offenses a strict liability crime that violates due process guaranteed by the United States Constitution as held in **Shelton v. Secretary, Department of Corrections**, 23 Fla. L. Weekly Fed. Dll (M.D. Fla. July 27, 2011). The First District rejected this claim expressly citing **Flagg 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); **Collins v. State**, 26 So.3d 1287 (Fla. 2009). The decision in **Flagg v. State**, *supra*, cited by the First District in its per curiam affirmed decision, is presently pending in this Court. **Flaaa 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. **Collins**, *supra*.

IV. ARGUMENT

ISSUE PRESENTED:

THIS COURT SHOULD ACCEPT JURISDICTION BECAUSE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN BLACK V. STATE. ___ SO. 3D ___ (FLA. 1ST DCA JANUARY 24, 2012)

CITES AS AUTHORITY A DECISION PENDING BEFORE THIS COURT.

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

In Jollie v. State. 405 So.2d 418, 420 (Fla. 1981), this Court held that it retained authority over cases that cite as controlling authority a decision that is pending review:

We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.

See also, Coyne v. State, 755 So.2d 108 (Fla. 2000)(applying Jollie jurisdiction to a certified question of great public importance). This Court has accepted jurisdiction in Adkins v. State, 71 So.3d 117 (Fla. 2011) and that case is still pending. And this Court issued an order staying consideration of Flaqq pending resolution of Adkins. Therefore, Flaqq is pending.

The issue in Collins v. State, 26 So.3d 1287 (Fla. 2009), was among others whether this Court had jurisdiction to review the opinion of the lower district. The district court of appeal cited

as authority for its decision Sheppard v. State, 988 So. 2d 74 (Fla. 2nd DCA 2008), quashed, 17 So.3d 275 (Fla. 2009). Accepting jurisdiction, this Court held:

At the time the Second District issued its Collins decision, Sheppard was pending review in this Court. We have jurisdiction. See, art. V, section 3(b)(3), Fla.Const.; Jollie v. State, 405 So.2d 418 (Fla. 1981)

We stayed the proceedings in this case [Collins] pending our disposition of Sheppard v. State, 17 So.3d 275 (Fla. 2009), in which we ultimately quashed the Second District⁷'s underlying Sheppard decision. We then issued an order directing respondent in the present case to show cause why we should not accept jurisdiction, quash the Second District's underlying Collins decision, and remand for reconsideration in light of the decision in Sheppard. Respondent in its response concedes that it can show no such cause.

Furthermore, the primary commentary on this Court's jurisdiction has recognized that Jollie jurisdiction remains while this Court considers whether to review another case, such as Flagg, in which a decision to review is pending resolution of Adkins. See, Harry Lee Anstead, GERAL KOGAN, THOMAS D. HAL, & ROBERT CRAIG WATERS, The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L.Rev. 4331, 522 (2005).

Since Flagg is currently before this Court, pending the resolution of Adkins, and the legal issue is the same, this Court has Jollie jurisdiction over this case. Therefore, it would be appropriate for this Court to 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 Dixie Daimwood, Assistant Attorney General, Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, at criminalappealsintake@myflorida.com as agreed by the parties, and by U.S. mail to appellant, Shawn Black, #125786, Century C.I., 400 Tedder Rd., Century, FL 32535, on this 31st 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

Black v. State,

So.3d

(Fla. 1st DCA January 24, 2 012)

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

SHAWN LAMONT BLACK,

Appellant,

CASE NO. 1D11 -1262

v. STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed January 24, 2012.

An appeal from the Circuit Court for Escambia County.
Linda L. Nobles, Judge.

Nancy A. Daniels, Public Defender, and Maria Ines Suber, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Dixie Daimwood, Assistant Attorney
General, Tallahassee, for Appellee.

ON MOTION FOR REHEARING

PER CURIAM.

We grant Appellant's motion for rehearing, withdraw our previous per
curiam affirmance, and substitute this opinion in its place.

Appellant contends in part that his convictions for drug offenses under chapter 893, Florida Statutes, should be set aside based upon Shelton v. Secretary, Department of Corrections. 23 Fla. L. Weekly Fed. Dl 1 (M.D. Fla. July 27, 2011). We recently rejected this argument in Flagg v. State. 74 So. 3d 138 (Fla. 1st DCA 2011). Accordingly, we AFFIRM. BENTON, C.J., DAVIS and MARSTILLER, JJ., CONCUR.