

IN THE SUPREME COURT OF FLORIDA

SHAWN LAMONT BLACK,

Petitioner,

Case No. SC12-154

v.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF
CRIMINAL APPEALS
FLORIDA BAR NO. 045489

DIXIE DAIMWOOD
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 059921

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 922-6674 (FAX)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS.....	ii
PRELIMINARY STATEMENT.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
ISSUE I	3
WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT'S DECISION IN <u>BLACK V. STATE</u> , -- So. 3d --, 2012 WL 193957 (Fla. 1 st DCA 2012)? (Restated)	
CONCLUSION.	4
CERTIFICATE OF SERVICE	4
APPENDIX	5

TABLE OF CITATIONS

Flagg v. State, 36 Fla. L. Weekly D2276
(Fla. 1st DCA Oct. 13, 2011). 1,2,3

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

Black v. State, -- So. 3d --, 2012 WL 193957,
(Fla. 1st DCA 2012). 1,3

State v. Adkins, Case No. SC11-1878 2

PRELIMINARY STATEMENT

Respondent, State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Shawn Lamont Black, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name. "PJB" will designate Petitioner's Jurisdictional Brief. Each symbol will be followed by any appropriate page number.

STATEMENT OF THE CASE AND FACTS

On November 22, 2011, the First District Court of Appeal issued an opinion, citing Flagg v. State, 36 Fla. L. Weekly D2276 (Fla. 1st DCA Oct. 13, 2011); See Black v. State, -- So. 3d --, 2012 WL 193957 (Fla. 1st DCA 2012).

SUMMARY OF ARGUMENT

The First District Court of Appeal cited as controlling authority Flagg v. State, 36 Fla. L. Weekly D2276 (Fla. 1st DCA Oct. 13, 2011), which is pending in this Court. As noted by Petitioner, the proceedings in Flagg v. State are stayed pending disposition of State v. Adkins, Case No. SC11-1878. Therefore, this Court has jurisdiction.

ARGUMENT

ISSUE I

WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT'S DECISION IN BLACK V. STATE, -- So. 3d --, 2012 WL193957 (FLA. 1st DCA 2012)? (Restated)

The First District Court of Appeal issued a per curiam affirmance in this case citing Flagg v. State, 36 Fla. L. Weekly D2276 (Fla. 1st DCA Oct. 13, 2011). This Court, in Jollie v. State, 405 So. 2d 418 (Fla. 1981), stated that:

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.

Id. at 420. As noted above, Flagg is pending in this court. Flagg v. State, Case No. SC11-2282. Therefore, this Court has jurisdiction to review this case.

CONCLUSION

Based on the forgoing reason, this Court has jurisdiction to hear this case.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by electronic mail to Maria Ines Suber, Esq., Assistant Public Defender, Leon County Courthouse, at ines.suber@flpd2.com this 27th day of February, 2012.

Respectfully submitted and served,

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 045489

DIXIE DAIMWOOD
Assistant Attorney General
Florida Bar No. 059921

Attorneys for State of Florida
Office of the Attorney General
Pl-01, the Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300
(850) 922-6674 (Fax)

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

Dixie Daimwood
Attorney for State of Florida

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APPENDIX

APPENDIX

DOCUMENT

A Black v. State, -- So. 3d --, 2012 WL 193957
(Fla. 1st DCA 2012)