

IN THE SUPREME COURT OF FLORIDA

ALLEN BENNETT,

Petitioner, :

v.

CASE NO.
First DCA No. 1D11-3782

STATE OF FLORIDA,

Respondent. :

JURISDICTIONAL BRIEF OF PETITIONER

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**CASE NO.
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_____/

PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

ALLEN BENNETT 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 Bennett v. State. Slip op. IDl 1-3782 (Fla. 1st DCA, March 5, 2012), and is attached as an appendix to this brief.

STATEMENT OF THE CASE AND FACTS

Petitioner, Allen Bennett, admitted that he violated probation by committing the new offenses of possession of cocaine and possession of paraphernalia. Appellant argued, for the first time on appeal, that his plea was based, erroneously, upon the "non-existent" offense of possession of cocaine, as the possession of cocaine statute must be deemed facially unconstitutional based upon the reasoning of Shelton v. Secretary, Dept. of Corrections, 23 Fla. L. Weekly Fed. Dl 1a (M.D. Fla. July 27, 2011).

The district court rejected Petitioner's claim with a "citation PC A," citing Flaggy. State, 74 So. 3d 138 (Fla. 1stDCA2011). FJagg is currently pending review in this Court.

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review decisions of the district courts which cite as controlling authority a decision that is pending review in the Florida Supreme Court. Jollie v. State, 405 So. 2d 418 (Fla. 1981). The decision in Flagg v. State, cited by the district court, is currently pending jurisdiction in this Court. Flagg v. State, SCI 1-2282 (proceedings stayed pending disposition of State v. Adkins, Case No. SCI 1-1878). Since Flagg is pending before this Court, this Court has jurisdiction to review the present case.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION BECAUSE THE DISTRICT COURT'S DECISION CITES AS AUTHORITY A DECISION PENDING BEFORE THIS COURT. The District Court, in affirming Bennett's conviction and sentence, cited Flagg v. State. 74 So. 3d 138 (Fla. 1st DCA 2011). The decision in Flagg is presently pending in this Court. Flagg v. State, Case No. SCI 1-2282 (proceedings stayed pending disposition of State v. Adkins. Case No. SCI 1-1878)

Pursuant to Jollie v. State. 405 So. 2d 418 (Fla. 1981), this Court has the discretion to exercise jurisdiction when a district court's per curiam opinion cites as authority a decision that is pending review in this Court. Since Flagg is pending before this Court, the Court should accept jurisdiction in order to promote consistency in the law and to avert potential conflict of decisions.

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 Lyles, Assistant Attorney General, The Capitol, PL-OI, Tallahassee, FL 32399-1050, and by U.S. Mail to Appellant, Mr. Allen Bennett, DOC# Q25003, Blackwater Correctional Facility, 5914 Jeff Ates Road, Milton, FL 32583, on this 14 day of March, 2012.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Times New Roman, 14 point.

Respectfully submitted,

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

ALLEN BENNETT,

Appellant, v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D11-3782

_____/

Opinion filed March 5, 2012.

An appeal from the Circuit Court for Bay County.

James B. Fensom, Judge.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Giselle Denise Lyles, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. See Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011).

BENTON, C.J., WOLF, and VAN NORTWICK, JJ., CONCUR.