

IN THE SUPREME COURT OF FLORIDA

ALLEN BENNETT,

Petitioner,

Case No. SC12-498

v.

STATE OF FLORIDA,

Respondent.

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JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI  
ATTORNEY GENERAL

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

GISELLE DENISE LYLEN  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR NO. 0508012

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

COUNSEL FOR RESPONDENT

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### 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, Allen Bennett, 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 December 9, 2011, the First District Court of Appeal issued a per curiam affirmed opinion, citing Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011). See Bennett v. State, \_\_\_\_ So. 3d \_\_\_\_ (Fla. 1st DCA, March 5, 2012).

### SUMMARY OF ARGUMENT

The First District Court of Appeal cited as controlling authority Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011), which was 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, which was just decided by this Court on July 12, 2012, after Appellant filed his Jurisdictional Brief. As State v. Adkins is no longer pending in this Court, there is no reason for this Court to accept jurisdiction of this case.

## ARGUMENT

### ISSUE I

#### WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT'S DECISION IN BENNETT V. STATE, CASE NO. 1D11-3782 (FLA. 1st DCA MARCH 5, 2012) (Restated)

The First District Court of Appeal issued a per curiam affirmance in this case citing Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 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. Flag v. State, supra, was stayed pending disposition of State v. Adkins, supra. However, after Appellant filed his jurisdictional brief, this court issued an opinion in State v. Adkins, \_\_\_ So. 3d \_\_\_ (Fla., July 12, 2012). As State v. Adkins, supra, is no longer pending in this Court, there is no need for this Court to accept jurisdiction of this case.

CONCLUSION

Based on the forgoing reason, this Court no longer 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 Richard M. Suma, Esq., Assistant Public Defender, Leon County Courthouse, at Richard.summa@flpd2.com, this 24 day of July, 2012.

Respectfully submitted and served,

PAMELA JO BONDI  
ATTORNEY GENERAL

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

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GISELLE DENISE LYLEN  
Assistant Attorney General  
Florida Bar No. 0495921

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.

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Giselle Denise Lylen  
Attorney for State of Florida



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APPENDIX

APPENDIX

DOCUMENT

A     Bennett v. State, \_\_\_ So. 3d \_\_\_  
       (Fla. 1st DCA, March 5, 2012)