

IN THE SUPREME COURT OF FLORIDA

ERIC SOUTHERS,

Petitioner,

Case No. SC12-542

v.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CITATIONS

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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, Eric Southers, 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 Southers v. State, 2012 WL 520386 (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 SOUTHERS V. STATE, 2012 WL 520386 (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 U.S. mail to Eric D. Southers, pro se, Fed. Reg. No. 28872-018, Federal Correctional Institution, 1900 Simler Avenue, Big Spring TX 79720 this 6th day of April, 2012.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

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

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APPENDIX

APPENDIX

DOCUMENT

A Southers v. State, 2012 WL 520386,
 (Fla. 1st DCA 2012).