

IN THE SUPREME COURT OF FLORIDA

FREDERICK LANE,

Petitioner,

v.

CASE NO. SC12-572

STATE OF FLORIDA,

First DCA No. 1D10-1067

Respondent.

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

**INITIAL BRIEF OF PETITIONER
ON JURISDICTION**

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STATEMENT OF THE CASE AND FACTS

In a direct appeal from a conviction of sale or delivery of cocaine, Lane filed a supplemental initial brief arguing the unconstitutionality of the statute under which he was prosecuted. The First District Court of Appeal initially affirmed, per curiam, without written opinion. The court subsequently granted Lane's motion for a written opinion and affirmed, per curiam with a citation to Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011).

Lane filed timely notice invoking this Court's conflict jurisdiction. This brief follows.

SUMMARY OF THE ARGUMENT

The First DCA cited Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011), in rejecting Thompson's challenge to the constitutionality of the statute under which he was convicted of sale and possession of a controlled substance. Flagg is now pending review in this Court, with briefing stayed pending disposition of State v. Adkins. This Court has discretionary conflict jurisdiction to review the decision because the district court cited a case pending review in this Court. See Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

ARGUMENT

THIS COURT SHOULD EXERCISE “JOLLIE”
REVIEW JURISDICTION TO MAINTAIN
UNIFORMITY OF DECISIONS ON THE ISSUE IN
STATE V. ADKINS.

State v. Adkins, No. SC11-1878, was pending review in this Court on the date this brief was filed. Also pending was Flagg v. State, No. SC11-2282, stayed pending disposition of Adkins. In a per curiam opinion, the First DCA cited its decision in Flagg as authority for its rejection of Thompson’s challenges to the constitutionality of his drug convictions. The citation to Flagg creates discretionary jurisdiction in this Court under Article V, Section 3(b)(3) of the Florida Constitution to review the First DCA decision as one which expressly and directly conflicts with a decision of this Court. See Jollie v. State, 405 So.2d 418, 420 (Fla. 1981) (concluding that “a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction”).

As in Flagg and other similar cases, the Court should exercise discretionary conflict jurisdiction to provide for uniform treatment of all defendants similar situated on the issue now pending disposition in Adkins.

CONCLUSION

Based on the arguments contained herein and the authorities cited in support thereof, the petitioner requests that this Honorable Court grant discretionary review.

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished by U.S. Mail to Donna A. Gerace, Office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399-1050, this 29th day of April, 2012. I hereby certify that this brief has been prepared using Times New Roman 14 point font.

Respectfully submitted,

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**APPENDIX TO
JURISDICTIONAL BRIEF OF PETITIONER**

Frederick Lane v. State, No. 1D10-1067
(Fla. 1st DCA, March 2, 2012)

2012 WL 676322
District Court of Appeal of Florida,
First District.

Frederick LANE, Appellant,
v.
STATE of Florida, Appellee.

No. 1D10-1067. | March 2,
2012.

An appeal from the Circuit Court of Duval
County. David M.
Gooding, Judge.

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Opinion

**ON MOTION FOR WRITTEN
OPINION**

PER CURIAM.

*1 We grant appellant's motion for
written opinion,
withdraw our opinion filed on December
21, 2011, and issue
this opinion in its stead.

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

AFFIRMED.

WOLF, THOMAS, and CLARK, JJ.,
concur.

Parallel Citations

37 Fla. L. Weekly D539

