NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)
Appellant,))
V.) Case No. 2D11-6296
ROBERT KLIMAS,)
Appellee.)))

Opinion filed November 7, 2012.

Appeal from the Circuit Court for Manatee County; Scott M. Brownell, Judge.

Pamela Jo Bondi, Attorney General, Tallahassee, and Elba Caridad Martin-Schomaker, Assistant Attorney General, Tampa, for Appellant.

James Marion Moorman, Public Defender, and Matthew D. Bernstein, Assistant Public Defender, Bartow, for Appellee.

KHOUZAM, Judge.

The State of Florida appeals the dismissal of its prosecution of Robert Klimas for two counts of possession of a controlled substance. The trial court had dismissed the charges upon a finding that the relevant statute, section 893.13, Florida

Statutes (2010), was unconstitutional. <u>See Shelton v. Secretary, Department of Corrections</u>, 802 F. Supp. 2d 1289 (M.D. Fla. 2011), <u>rev'd</u>, 2012 WL 3641008 (11th Cir. Aug. 24, 2012). The statute has since been found constitutional in <u>State v. Adkins</u>, 37 Fla. L. Weekly S449 (Fla. July 12, 2012). We therefore reverse with instructions to vacate the order of dismissal and reinstate the cause.

Reversed and remanded for further proceedings.

ALTENBERND and NORTHCUTT, JJ., Concur.