

Supreme Court of Florida

No. SC04-379

STATE OF FLORIDA,
Petitioner,

vs.

DAVID ALLEN FULLER,
Respondent.

[October 21, 2004]

PER CURIAM.

The State of Florida petitions for review of Fuller v. State, 867 So. 2d 469 (Fla. 5th DCA 2004), which certified conflict with the decision in Davis v. State, 710 So. 2d 1051 (Fla. 1st DCA 1998). Although we have jurisdiction, see art. V, § 3(b)(4), Fla. Const., given the First District's recent decision in Kiedrowski v. State, 876 So. 2d 692 (Fla. 1st DCA 2004), which followed Fuller and distinguished Davis, we conclude that no actual conflict exists and decline to exercise our discretion to review the case.

It is so ordered.

PARIENTE, C.J., and WELLS, QUINCE, CANTERO and BELL, JJ., concur.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Application for Review of the Decision of the District Court of Appeal - Certified
Direct Conflict of Decisions

Fifth District - Case No. 5D03-925

(Volusia County)

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for Petitioner

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