

Supreme Court of Florida

No. SC03-671

STATE OF FLORIDA,
Petitioner,

vs.

RAMON ALVEREZ, et al.,
Respondents.

[October 12, 2006]

QUINCE, J.

We have for review Alvarez v. State, 840 So. 2d 322 (Fla. 5th DCA 2003), in which the petitioner alleges the decision of the Fifth District Court of Appeal expressly and directly conflicts with Melvin v. State, 804 So. 2d 460 (Fla. 2d DCA 2001), on the same question of law. At the time the Fifth District issued its decision in Alvarez, the case of Kephart v. Kearney, 826 So. 2d 517 (Fla. 4th DCA 2002), quashed sub nom. Kephart v. Hadi, 932 So. 2d 1086 (Fla. 2006), was pending review in this Court on a certified conflict with Melvin on the same issue. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

In Kephart, this Court addressed the same issue of whether the Jimmy Ryce Act requires the probable cause petition to be supported by sworn proof in the form of an affidavit or live testimony by a mental health professional who has evaluated the individual. See Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006). This Court concluded, “as did the Second District in Melvin and the Fourth District in Kephart, that the Act requires the probable cause petition to be supported by sworn proof.” Kephart, 932 So. 2d at 1094. However, we disapproved the Fourth District’s opinion to the extent that Kephart required a mental health professional to provide the sworn proof accompanying the petition. Id. This Court held “that a probable cause petition accompanied by an affidavit similar to that found in an arrest warrant is sufficient under the Act.” Id. We quashed the opinion of the Fourth District in Kephart “to the extent it is inconsistent with this opinion” and approved the Second District’s opinion in Melvin. Id.

In response to this Court’s order to show cause dated June 13, 2006, respondents failed to show cause why we should not accept jurisdiction in the case, summarily quash the decision being reviewed and remand for reconsideration in light of our decision in Kephart. We accordingly grant the petition for review in the present case. The decision under review is quashed and this matter is remanded to the Fifth District Court of Appeal for reconsideration in light of this Court's decision in Kephart.

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, CANTERO, and BELL, JJ.,
concur.

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

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

Fifth District - Case No. 5D01-3560

(Volusia County)

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Judy Taylor Rush
and Douglas T. Squire, Assistant Attorneys General, Daytona Beach, Florida,

for Petitioner

James S. Purdy, Public Defender and John M. Selden, Assistant Public Defender,
Seventh Judicial Circuit, Daytona Beach, Florida,

for Respondent