

# Supreme Court of Florida

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No. SC05-1173

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**STATE OF FLORIDA,**  
Petitioner,

vs.

**FRED O. BURKE,**  
Respondent.

[April 3, 2008]

PER CURIAM.

This Court initially accepted jurisdiction to review State v. Burke, 902 So. 2d 955 (Fla. 4th DCA 2005), review granted, 919 So. 2d 436 (Fla. 2006) (table), in which the Fourth District Court of Appeal certified conflict with Hilton v. State, 901 So. 2d 155 (Fla. 2d DCA 2005) (en banc), quashed, 961 So. 2d 284 (Fla. 2007). We then stayed proceedings in this case pending our disposition of Hilton, which was pending review in this Court. See Hilton v. State, 961 So. 2d 284 (Fla. 2007) (quashing the Second District Court of Appeal's decision in Hilton, with which the Fourth District had certified conflict in Burke).

When our decision in Hilton became final, we issued an order directing petitioner to show cause why our Hilton decision is not controlling in this case, and thus why we should not discharge jurisdiction and dismiss review. Upon consideration of petitioner's response and respondent's reply thereto, we conclude that jurisdiction was improvidently granted. Accordingly, we hereby discharge jurisdiction and dismiss this review proceeding.

It is so ordered.

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

WELLS, J., dissents.

NO MOTION FOR REHEARING WILL BE ALLOWED.

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

Fourth District - Case No. 4D03-4879

(Broward County)

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for Petitioner

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