

# Supreme Court of Florida

---

No. SC05-514

---

**FRANKLIN W. NOOE,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[May 4, 2006]

PER CURIAM.

We originally accepted jurisdiction to review Nooe v. State, 892 So. 2d 1135 (Fla. 5th DCA 2005), pursuant to article V, section 3(b)(3) of the Florida Constitution. Upon further consideration, we have determined that jurisdiction was improvidently granted because State v. Diaz, 814 So. 2d 466 (Fla. 3d DCA 2002), was decided on the issue of the statute of limitations pursuant to section 812.035(10), Florida Statutes (1995), and the present case was decided on the basis of the aggregation provision in section 812.012(9)(c),<sup>1</sup> Florida Statutes (2001).

---

1. This provision was renumbered to be section 812.012(10)(c) in 2005.

Accordingly, express and direct conflict does not exist, and this review proceeding is hereby dismissed.

It is so ordered.

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

NO MOTION FOR REHEARING WILL BE ALLOWED.

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

Fifth District - Case No. 5D03-2658

(Volusia County)

Michael H. Lambert, Daytona Beach, Florida

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, Barbara C. Davis, Douglas T. Squire, and Kellie A. Nielan, Assistant Attorneys General, Daytona Beach, Florida,

for Respondent