

Supreme Court of Florida

No. SC06-1528

STATE OF FLORIDA,
Petitioner,

vs.

A.M.W.,
Respondent.

[October 4, 2007]

LEWIS, C.J.

We have for review A.M.W. v. State, 934 So. 2d 564 (Fla. 5th DCA 2006), in which the Fifth District Court of Appeal followed its previous decisions in Scarola v. State, 889 So. 2d 108 (Fla. 5th DCA 2004) (en banc), and Wilson v. State, 776 So. 2d 347 (Fla. 5th DCA 2001), noting that the Fourth District Court of Appeal had certified conflict with Wilson in Kelso v. State, 898 So. 2d 1023 (Fla. 4th DCA 2005), approved, 961 So. 2d 277 (Fla. 2007). At the time the Fifth District Court issued its decision in A.M.W., Kelso was pending review in this Court. We have jurisdiction. See art V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

We stayed proceedings in this case pending disposition of Kelso. We have since decided Kelso, therein approving the Fourth District Court's underlying Kelso decision and disapproving the Fifth District Court's Scarola and Wilson decisions. See Kelso v. State, 961 So. 2d 277 (Fla. 2007). We thus issued an order directing respondent in the present case to show cause why we should not accept jurisdiction, quash the Fifth District Court's A.M.W. decision, and remand for reconsideration in light of our decision in Kelso. Respondent did not respond to that order, thereby constructively conceding that we should so proceed.

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 for reconsideration upon application of this Court's decision in Kelso.

It is so ordered.

WELLS, ANSTEAD, PARIENTE, QUINCE, 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. 5D05-1517

(Orange County)

Bill McCollum, Attorney General, Tallahassee, Florida, Pamela J. Koller and Kellie A. Nielan, Assistant Attorneys General, Daytona Beach, Florida,

for Petitioner

James S. Purdy, Public Defender and Robert E. Wildridge, Assistant Public
Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Respondents