

Supreme Court of Florida

No. SC06-2271

GREGORY A. CUTTS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[February 21, 2008]

PER CURIAM.

We have for review Cutts v. State, 940 So. 2d 1246 (Fla. 2d DCA 2006), in which the Second District Court of Appeal certified conflict with Isaac v. State, 911 So. 2d 813 (Fla. 1st DCA 2005), notice to invoke discretionary jurisdiction filed, No. SC05-2047 (Fla. Oct. 31, 2005). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

We stayed proceedings in this case pending disposition of Galindez v. State, 955 So. 2d 517 (Fla. 2007), which we ultimately decided on harmless error grounds based on a thorough review of the record. We thereafter issued an order directing petitioner to show cause why our Galindez decision should not control

the outcome of the present case. However, petitioner's response and respondent's reply thereto do not contain enough information or record attachments for us to perform a Galindez harmless error analysis. Moreover, we cannot unilaterally perform such an analysis, as the record is not before this Court.

We accordingly grant the petition for review in the present case. The decision under review is quashed and this matter is remanded to the Second District Court for application of a harmless error analysis based on our decision in Galindez and a thorough review of the record.

It is so ordered.

LEWIS, C.J., and 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 - Certified Direct Conflict of Decisions

Second District - Case No. 2D06-192

(Polk County)

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for Petitioner

Bill McCollum, Attorney General, Tallahassee, Florida, and Susan M. Shanahan, Assistant Attorney General, Tampa, Florida,

for Respondent