

Supreme Court of Florida

No. SC06-2333

DAVID L. BROWN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 19, 2009]

PER CURIAM.

We have for review Brown v. State, 940 So. 2d 500 (Fla. 4th DCA 2006), an unelaborated decision in which the Fourth District Court of Appeal relied upon its decision in Yisrael v. State, 938 So. 2d 546 (Fla. 4th DCA 2006) (en banc), disapproved in part, 993 So. 2d 952 (Fla. 2008).

When the Fourth District's decision in Brown became final, Yisrael was already pending review in this Court. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

We stayed proceedings in this case pending our disposition of Yisrael, in which we: (1) approved the decision of the First District in Gray v. State,

910 So. 2d 867 (Fla. 1st DCA 2005), and (2) disapproved the reasoning and rule of law articulated by the Fourth District in its underlying decision, but ultimately approved the result reached by that court on other grounds. See Yisrael v. State, 993 So. 2d 952, 960-61 (Fla. 2008). We subsequently issued an order directing the State to show cause why we should not accept jurisdiction, summarily quash the decision under review, and remand for reconsideration in light of our decision in Yisrael. In response, the State asserts several record-based substantive contentions and urges that this Court deny review. However, the full appellate record is not before us, and the Fourth District is the proper tribunal in which to present these fact-based contentions.

This Court has disapproved in part the very opinion upon which the district court relied below. Accordingly, we grant the petition for review, quash, and remand to the Fourth District Court of Appeal for reconsideration upon application of our decision in Yisrael.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, and LABARGA, 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

Fourth District - Case No. 4D05-424

(Broward County)

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