

Supreme Court of Florida

No. SC06-2519

WILLIAM FRANK BUTLER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[November 8, 2007]

PER CURIAM.

We have for review Butler v. State, 946 So. 2d 1131 (Fla. 2d DCA 2006), in which the Second District Court of Appeal certified conflict with Hearns v. State, 912 So. 2d 377 (Fla. 3d DCA 2005), approved, 961 So. 2d 211 (Fla. 2007). We have jurisdiction. See art V, § 3(b)(4), Fla. Const.

We stayed proceedings in this case pending disposition of Hearns. After Hearns was decided, we issued an order directing respondent to show cause why we should not exercise jurisdiction, quash the Butler decision, and remand for reconsideration in light of our decision in Hearns. In its response, respondent “agrees that this Court’s decision in [Hearns] applies to Petitioner’s case.”

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

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. 2D05-2729

(Collier County)

James Marion Moorman, Public Defender, and Megan Olson, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Bill McCollum, Attorney General, Tallahassee, Florida, and Timothy A. Freeland, Assistant Attorney General, Tampa, Florida,

for Respondent