

# Supreme Court of Florida

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No. SC06-2247

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**MICHAEL DENLINGER,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[March 19, 2009]

PER CURIAM.

We have for review Delinger v. State, 944 So. 2d 1072 (Fla. 4th DCA 2006),<sup>1</sup> in which the Fourth District Court of Appeal relied on 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), and affirmed the trial court without further elaboration. At the time that petitioner sought to invoke this Court's discretionary jurisdiction, Yisrael was pending review. We have

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1. Based upon the materials submitted to this Court, there is confusion concerning whether petitioner's surname is spelled "Delinger," as reported by the Fourth District, or "Denlinger" as used by the parties. (Emphasis supplied.)

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 that documents submitted during sentencing complied with this Court's Yisrael decision. However, the full appellate record is not before the Court, and the Fourth District is a more appropriate forum in which to raise these factual contentions that were not addressed within the four corners of the district court's opinion 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. 4D05-2475

(St. Lucie County)

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for Petitioner

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