

Supreme Court of Florida

No. SC07-13

MURRAY BREITBERG,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[February 26, 2009]

PER CURIAM.

We have for review Breitberg v. State, 942 So. 2d 439 (Fla. 4th DCA 2006), in which the Fourth District Court of Appeal cited as authority its decision in Saintelien v. State, 937 So. 2d 234 (Fla. 4th DCA 2006), approved in result, 990 So. 2d 494 (Fla. 2008), and certified conflict with the Second District Court of Appeal's decision in King v. State, 911 So. 2d 229 (Fla. 2d DCA 2005), and the Fifth District Court of Appeal's decision in Kidd v. State, 855 So. 2d 1165 (Fla. 5th DCA 2003). At the time the Fourth District Court issued its decision in Breitberg, its Saintelien decision was pending review in this Court. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

We stayed the present case pending our disposition of Saintelien, in which we ultimately approved in result the Fourth District Court's underlying Saintelien decision, and approved the decisions of the Second and Fifth District Courts in King and Kidd "to the extent that a rule 3.800(a) motion may be used to challenge a sexual predator designation when it is apparent from the face of the record that the defendant did not meet the criteria for designation as a sexual predator." Saintelien v. State, 990 So. 2d 494, 497 (Fla. 2008).

We have determined to exercise jurisdiction and grant the petition for review in the present case. The decision under review is quashed, and this matter is remanded to the Fourth District Court for reconsideration upon review of the record and application of this Court's decision in Saintelien.

It is so ordered.

QUINCE, C.J., and WELLS, 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 - Certified Direct Conflict of Decisions

Fourth District - Case No. 4D06-3681

(Broward County)

Murray Breitberg, pro se, South Bay, Florida,

for Petitioner

Bill McCollum, Attorney General, Tallahassee, Florida,

for Respondent