

# Supreme Court of Florida

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No. SC07-20

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**SAMUEL NEWBY,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[March 19, 2009]

PER CURIAM.

We have for review Newby v. State, 945 So. 2d 636 (Fla. 4th DCA 2006), 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), and certified conflict with the First District Court of Appeal's decision in Gray v. State, 910 So. 2d 867 (Fla. 1st DCA 2005). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

We stayed proceedings in this case pending our disposition of Yisrael, in which we: (1) approved the decision of the First District in Gray, 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 then issued an order directing the State to show cause why we should not exercise jurisdiction, summarily quash the decision under review, and remand for reconsideration in light of our decision in Yisrael. The State concedes that it cannot show such cause, and petitioner Newby agrees.

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, and POLSTON, JJ., concur.  
LABARGA, J., recused.

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. 4D05-3555

(Palm Beach County)

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for Petitioner

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