

Supreme Court of Florida

No. SC07-2133

RUDOLPH VITTORIO,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 19, 2009]

PER CURIAM.

We have for review Vittorio v. State, 967 So. 2d 434 (Fla. 4th DCA 2007), 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'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 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 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 – Certified Direct Conflict of Decisions

Fourth District - Case No. 4D06-343

(Broward County)

Carey Haughwout, Public Defender, and Margaret Good-Earnest, Assistant Public Defender, Fifteenth Judicial Circuit, West Palm Beach, Florida,

for Petitioner

Bill McCollum, Attorney General, Tallahassee, Florida, Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, Florida,

for Respondent