

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

ROGER LOPEZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-5110

[August 6, 2014]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Kenneth L. Gillespie, Judge; L.T. Case No. 09-2991 CF10A.

Antonio Bugge, Miami, for appellant.

No appearance required for appellee.

PER CURIAM.

On Remand

This case is before the Court on remand from the Florida Supreme Court which quashed our decision in *Lopez v. State*, 84 So. 3d 389 (Fla. 4th DCA 2012). Appellant entered his plea in this case on April 22, 2009. He did not appeal. His conviction became final on direct review on or about May 22, 2009.

Padilla v. Kentucky, 130 S. Ct. 1473 (2010), which issued on March 31, 2010, does not apply retroactively to convictions that were final on direct review at the time *Padilla* issued. *Chaidez v. United States*, 133 S. Ct. 1103 (2013); *Hernandez v. State*, 124 So. 3d 757 (Fla. 2012).

Appellant filed this timely rule 3.850 motion seeking to withdraw his plea on June 2, 2010, after *Padilla* had been decided. We have held that *Padilla* does not apply retroactively in this situation. *Perez v. State*, 120 So. 3d 49, 51 (Fla. 4th DCA 2013) (holding that *Castano v. State*, 119 So. 3d 1208 (Fla. 2012), applies only where the postconviction claim was

pending before the trial court when *Padilla* was decided).

Affirmed.

TAYLOR, GERBER and LEVINE, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.