

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

**DAVID MOORE, JR.,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D14-2723

[October 15, 2014]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Elizabeth A. Metzger, Judge; L.T. Case No. 431994CF000959A.

David Moore, Jr., Milton, pro se.

No appearance required for appellee.

PER CURIAM.

We affirm the denial of appellant's successive and untimely motion for postconviction relief. Appellant raised the same claim regarding misadvice of counsel regarding his plea in *Moore v. State*, 114 So. 3d 291 (Fla. 4th DCA 2013). He claims that because of *Alcorn v. State*, 121 So. 3d 419 (Fla. 2013), decided after *Moore*, he is entitled to re-raise this same claim. However, Florida Rule of Criminal Procedure 3.850(b)(3) permits a claim to be raised beyond the two-year time limitation only "where the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively, and the claim is made within 2 years of the date of the mandate of the decision announcing the retroactivity." Neither *Alcorn* nor any decision since its rendition has held that it is to be applied retroactively, nor does it appear that *Alcorn* meets the retroactivity test announced in *Witt v. State*, 387 So. 2d 922 (Fla. 1980).

*Affirmed.*

DAMOORGIAN, C.J., WARNER and GERBER, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***