

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**DIEGO MONTOYA,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D07-3620

[May 28, 2008]

PER CURIAM.

*Affirmed. See Pena v. State*, 33 Fla. L. Weekly D1062 (Fla. 4th DCA Apr. 16, 2008).

SHAHOOD, C.J., HAZOURI and DAMOORGIAN, JJ., concur.

\* \* \*

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael L. Gates, Judge; L.T. Case No. 75-2230 CF10A.

Sherri A. Romano of Sherri A. Romano, P.A., Coral Gables, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Thomas A. Palmer, Assistant Attorney General, West Palm Beach, for appellee.

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