

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2013

RAIMUNDO GOMEZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D13-1036

[November 13, 2013]

PER CURIAM.

We affirm the denial of appellant's untimely motion for postconviction relief. In it, appellant alleged that his attorney misadvised him as to the consequences to his immigration status of his plea and sentence. He pled no contest to sale or delivery of controlled pills (MDMA, known as "ecstasy") and received a withhold of adjudication with eighteen months of probation. When his green card, allowing him legal residency in this country, came up for renewal six years later, he discovered that, even though his attorney had advised him that a withhold of adjudication might prevent deportation, deportation for the crime was automatic, regardless of the withholding of adjudication. He moved for postconviction relief based upon his attorney's misadvice, which the trial court denied.

His motion was untimely. *See Marshall v. State*, 983 So. 2d 680, 682-84 (Fla. 4th DCA 2008) (time for bringing a postconviction ineffective assistance claim based upon misadvice of counsel commences on the date conviction and sentence becomes final); *see also Gusow v. State*, 6 So. 3d 699, 705 (Fla. 4th DCA 2009) (same). Those cases apply the rule of *State v. Green*, 944 So. 2d 208 (Fla. 2006), which holds that a postconviction claim of an involuntary plea based upon *failure* to advise of deportation consequences must be brought within two years of the conviction becoming final. In *Marshall*, we found that the reasoning of *Green* should also apply in cases of misadvice.

In *Marshall*, we certified conflict with *Rodriguez v. State*, 824 So. 2d 328 (Fla. 3d DCA 2002), and *State v. Johnson*, 615 So. 2d 179 (Fla. 3d

DCA 1993). This conflict has never been resolved, although *Rodriguez* and *Johnson* were both decided prior to *Green*, which we conclude controls this issue.

Affirmed.

WARNER, MAY and FORST, JJ., concur.

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Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Lynn Rosenthal, Judge; L.T. Case No. 03-20145 CF10A.

Charles Wender, Boca Raton, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Jeanine Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.