

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SCOTTIE LEE WHITE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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Case No. 2D13-6132

Opinion filed August 27, 2014.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pasco County; Linda Babb, Judge.

Scottie Lee White, pro se.

NORTHCUTT, Judge.

We affirm the postconviction court's denial of Scottie Lee White's petition for writ of habeas corpus, which the court appropriately treated as an untimely motion filed under Florida Rule of Criminal Procedure 3.850. White claimed that the trial court committed fundamental error when it gave an erroneous instruction on voluntary manslaughter, citing State v. Montgomery, 39 So. 3d 252, 257-58 (Fla. 2010). We write only to observe that the postconviction court properly rejected this contention on the ground that the Montgomery case does not apply retroactively to cases that were final

before it issued. See Mendoza v. State, 93 So. 3d 458, 458 (Fla. 4th DCA 2012);
Harricharan v. State, 59 So. 3d 1162, 1163 (Fla. 5th DCA 2011).

Affirmed.

SILBERMAN and KELLY, JJ., Concur.