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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

VIVAKANAND KISSOON,

Appellant,

٧.

STATE OF FLORIDA,

Appellee.

Case No. 2D12-83

Opinion filed August 22, 2012.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hendry County; John Duryea, Judge.

BLACK, Judge.

Vivakanand Kissoon appeals the summary denial of his motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850. We affirm. <u>See Barrios-Cruz v. State</u>, 63 So. 3d 868 (Fla. 2d DCA 2011). As in <u>Barrios-Cruz</u>, 63 So. 3d at 870, we hold that <u>Padilla v. Kentucky</u>, 130 S. Ct. 1473 (2010), does not apply retroactively in postconviction proceedings, and we certify to the Florida Supreme Court the following question of great public importance pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v):

SHOULD THE RULING IN <u>PADILLA V. KENTUCKY</u>, 130 S. Ct. 1473 (2010), BE APPLIED RETROACTIVELY IN POSTCONVICTION PROCEEDINGS?

Affirmed.

WHATLEY and MORRIS, JJ., Concur.