

# Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed July 20, 2011.

Not final until disposition of timely filed motion for rehearing.

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No. 3D11-368

Lower Tribunal No. 09-18446

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**Rudolph Maxwell,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An appeal under Florida Rule of Appellate Procedure 9.315(a) from the Circuit Court for Miami-Dade County, Beatrice Butchko, Judge.

Rudolph Maxwell, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before SUAREZ and LAGOA, JJ., and SCHWARTZ, Senior Judge.

SUAREZ, J.

Rudolph Maxwell appeals from an order denying his petition for writ of habeas corpus. We reverse and remand.

Maxwell raised a jury instruction issue in his petition for habeas below, relying on Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009). In that case, the First District certified a question to the Florida Supreme Court, which ultimately approved the decision in Montgomery. State v. Montgomery, 39 So. 3d 252 (Fla. 2010). The trial court's order denying habeas relief to Maxwell relied on cases from the Third District, and other districts, that held contrary to the First District's decision in Montgomery, but had either certified conflict with or were pending when Montgomery was up on review with the Florida Supreme Court. Since the Florida Supreme Court approved of the decision in Montgomery, those cases are no longer valid.<sup>1</sup> See, e.g., Coiscou v. State, 43 So. 3d 123 (Fla. 3d DCA 2010) (concluding that Valdes-Pino is no longer controlling law in this District since approval of Montgomery).

Because the defendant's habeas petition below was "in the pipeline" while the question and conflict raised in Montgomery was pending with the Florida Supreme Court, we reverse and remand for reconsideration of the merits of Maxwell's habeas petition in light of State v. Montgomery, 39 So. 3d 252 (Fla. 2010).

Reversed and remanded for further proceedings.

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<sup>1</sup> The trial court's order denying Maxwell's habeas petition was rendered on April 1, 2010, and the Florida Supreme Court approved of Montgomery a week later, on April 8, 2010.