

Third District Court of Appeal

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

Opinion filed September 28, 2011.
Not final until disposition of timely filed motion for rehearing

No. 3D11-368
Lower Tribunal No. 09-18446

Rudolph Maxwell,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Beatrice A. Butchko, Judge.

Rudolph Maxwell, in proper person.

Pamela Jo Bondi, Attorney General, and Richard L. Polin, Chief Assistant Attorney General, for appellee.

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

ON MOTION FOR REHEARING

PER CURIAM.

We grant the motion for rehearing filed by the State of Florida, vacate and withdraw the opinion issued in this case on July 20, 2011, and substitute the following opinion in its place:

We affirm the trial court's order denying Rudolph Maxwell's petition for habeas corpus. The Florida Supreme Court's decision in State v. Montgomery, 39 So. 3d 252 (Fla. 2010) was rendered well after Maxwell's convictions and sentences were final,¹ and it is not retroactively applicable. See Witt v. State, 387 So. 2d 922 (Fla. 1980); see, e.g., Harricharan v. State, 59 So. 3d 1162 (Fla. 5th DCA 2011); Rozzelle v. State, 29 So. 3d 1141 (Fla. 1st DCA 2009). There is no legal basis for reversing the trial court's decision to deny Maxwell's petition for habeas relief. See Smith v. State, 598 So. 2d 1063, 1066 (Fla. 1992) (“[W]e hold that any decision of this Court announcing a new rule of law, or merely applying an established rule of law to a new or different factual situation, must be given retrospective application by the courts of this state in every case pending on direct review or not yet final. . . . To benefit from the change in law, the defendant must have timely objected at trial if an objection was required to preserve the issue for appellate review.”)

Affirmed.

¹ Maxwell v. State, 896 So. 2d 765 (Fla. 3d DCA 2005).