

Third District Court of Appeal

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

Opinion filed April 6, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D11-452
Lower Tribunal No. 04-17066 A

Leonel Munoz,
Petitioner,

vs.

The State of Florida,
Respondent.

A case of original jurisdiction – Habeas Corpus.

Leonel Munoz, in proper person.

Pamela Jo Bondi, Attorney General, for respondent.

Before RAMIREZ, C.J., and SUAREZ and LAGOA, JJ.

PER CURIAM.

Leonel Munoz seeks habeas corpus relief based on appellate counsel's ineffective assistance in failing to raise a fundamental error claim, pursuant to

State v. Montgomery, 39 So. 3d 252 (Fla. 2010). Based on our prior decisions in Cubelo v. State, 41 So. 3d 263 (Fla. 3d DCA 2010), Daniels v. State, 46 So. 3d 630 (Fla. 3d DCA 2010), and Guerra v. State, 44 So. 3d 226 (Fla. 3d DCA 2010), we deny the motion. Where the jury was instructed on both manslaughter by act and manslaughter by culpable negligence, there was no fundamental error requiring a reversal of the petitioner's conviction. See Daniels, 46 So. 3d at 630.

Habeas corpus denied.