

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2011

LUIS ALFREDO LUCIANO,

Petitioner,

v.

Case No. 5D10-3626

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed September 2, 2011

Petition Alleging Ineffective Assistance of Appellate
Counsel, A Case of Original Jurisdiction.

Luis A. Luciano, Milton, Pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Respondent.

ON MOTION FOR REHEARING

PER CURIAM.

We grant petitioner's motion for rehearing, and withdraw our prior order denying relief. For the reasons explained in *Lopez v. State*, --- So. 3d ---, 2011 WL 3516143, 5D11-244 (Fla. 5th DCA August 12, 2011) and *Hodges v. State*, 64 So. 3d 142 (Fla. 5th DCA 2011), we grant the petition alleging ineffective assistance of appellate counsel, vacate petitioner's attempted second-degree murder conviction and remand for a new trial. In granting this relief, we rely upon *Burton v. State*, --- So. 3d ----, 2011 WL

1326258, 5D10-1399 (Fla. 5th DCA April 8, 2011), which expressly conflicts with the Fourth District's decision in *Williams v. State*, 40 So.3d 72 (Fla. 4th DCA 2010), *rev. granted*, 64 So.3d 1262 (Fla. 2011). Accordingly, we certify that this opinion also conflicts with *Williams*, which is currently being reviewed by the Florida Supreme Court.

PETITION GRANTED.

PALMER, LAWSON, and EVANDER, JJ., concur.