

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

JULY TERM 2011

ABRAHAM DE PINILLO MARTINEZ,

Appellant,

v.

Case No. 5D11-969

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 12, 2011

3.850 Appeal from the Circuit Court
for Brevard County,
Robert T. Burger, Judge.

Ricardo Corona and Juan C. Freire
of The Corona Law Firm,
Miami, for Appellant

No Appearance for Respondent

ON MOTION FOR REHEARING AND WRITTEN OPINION

PER CURIAM.

We deny Appellant's motion for rehearing, but withdraw our previous per curiam opinion dated June 14, 2011, and substitute the following opinion in its place.

AFFIRMED. *See Santiago v. State*, 36 Fla. L. Weekly D1426 (Fla. 5th DCA July 1, 2011); *see also Hernandez v. State*, 61 So. 3d 1144, 1151 (Fla. 3d DCA 2011) (holding, *inter alia*, that the decision in *Padilla v. Kentucky*, --- U.S. ----, 130 S. Ct. 1473,

176 L. Ed. 2d 284 (2010), should not be applied retroactively, while certifying the question as one of great public importance); accord *Barrios-Cruz v. State*, 63 So. 3d 868 (Fla. 2d DCA 2011). We join the Second and Third District in certifying the following question as a question of great public importance:

SHOULD THE RULING IN *PADILLA V. KENTUCKY*, --- U.S. ----, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), BE APPLIED RETROACTIVELY IN POSTCONVICTION PROCEEDINGS?

SAWAYA, TORPY, COHEN, JJ., concur.