

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

JULY TERM 2013

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

DOMINIQUE J. TOLBERT,

Petitioner,

v.

Case No. 5D13-1399

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

Opinion filed August 23, 2013

Petition Alleging Ineffectiveness  
of Appellate Counsel,  
A Case of Original Jurisdiction.

Dominique J. Tolbert, Lake City, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Carmen F. Corrente,  
Assistant Attorney General, Daytona  
Beach, for Respondent.

PER CURIAM.

Petitioner, Dominique J. Tolbert, seeks another appeal, alleging ineffective assistance of appellate counsel. See generally Fla. R. App. P. 9.141(d). We deny the petition.<sup>1</sup> See Contreras-Mayahua v. State, 40 So. 3d 861, 863 (Fla. 4th DCA 2010) (finding that erroneous manslaughter by act instruction as lesser included offense of

---

<sup>1</sup> We disregard the State's concession of error as it fails to recognize that Petitioner's conviction for manslaughter makes the concerns that were noted in State v. Montgomery, 39 So. 3d 252 (Fla. 2010), inapplicable to the present case.

second-degree murder was not fundamental error where defendant was convicted of lesser included offense of manslaughter).

PETITION DENIED.

PALMER, ORFINGER and BERGER, JJ., concur.