

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

MORRIS T. YOUNG,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-3452

[November 29, 2006]

ON MOTION FOR REHEARING

PER CURIAM.

We withdraw our prior opinion and substitute the following in its place.

Appellant appeals an order denying his motion for postconviction relief. We affirm as the motion is untimely. Appellant's conviction was final in 1999, and the current postconviction relief motion was not filed until 2006. He claims an exception to the two-year time limitation of Florida Rule of Criminal Procedure 3.850, relying on *Missouri v. Seibert*, 542 U.S. 600 (2004), decided after his conviction, to support his contention that his plea was involuntary based upon a coerced confession. However, *Seibert* is an application of the *Miranda* decision, not the establishment of a fundamental constitutional right which has been held to apply retroactively. See Fla. R. Crim. P. 3.850(b)(2).

Appellant's other claim, that his plea was based on erroneous advice of counsel, is equally barred as untimely.

Therefore, the trial court did not err in summarily denying this untimely motion.

Affirmed.

WARNER, POLEN and SHAHOOD, JJ., concur.

* * *

Appeal of orders denying rule 3.850 motions from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Lucy Chernow Brown, Judge; L.T. Case No. 97-10836 CFA02.

Morris T. Young, Florida City, pro se.

No appearance required for appellee.