

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

WILLY PALMER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-3980

[June 23, 2010]

PER CURIAM.

We affirm the trial court's order summarily denying appellant's rule 3.850 motion for postconviction relief. Appellant claimed that the trial court's application of the 2001 amendment to section 948.06(1), Florida Statutes was retroactive in violation of the prohibition against ex post facto laws. We do not agree. While the underlying offense for which appellant was placed on probation is alleged to have occurred before the statutory change, appellant was not placed on probation until well after the statutory change. See *Harper v. State*, 955 So. 2d 617, 618 (Fla. 5th DCA 2007). To the extent that our decision conflicts with the First District's decisions in *Frye v. State*, 885 So. 2d 419 (Fla. 1st DCA 2004) and *Harris v. State*, 893 So. 2d 669 (Fla. 1st DCA 2005) regarding the crucial date, we certify a conflict.¹ See *Shenfeld v. State*, 14 So. 3d 1021, 1024 (Fla. 4th DCA 2009) (holding that retroactive application of the 2007 amendment to section 948.06(1)(d), Florida Statutes, did not constitute an ex post facto violation).²

¹ In *Harris v. State*, the First District reiterated its holding from *Frye* that the 2001 amendment to section 948.06(1), Florida Statutes, would violate ex post facto protections if applied to sentences of persons whose offenses were committed before the effective date of the amendment (emphasis added). 893 So. 2d at 670.

² This court in *Shenfeld* previously certified a conflict with the First District's decisions in *Frye* and *Harris* with respect to whether retroactive application of amendments to section 948.06, Florida Statutes constituted an ex post facto violation under the second prong of the ex post facto test.

Affirmed.

TAYLOR, MAY and DAMOORGIAN, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Geoffrey D. Cohen, Judge; L.T. Case No. 01-5032 CF10A.

Willy Palmer, Okeechobee, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.