

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

PABLO VALDIVIESO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-5323

[July 5, 2012]

On Appellant's Motion for Rehearing and Clarification

PER CURIAM.

Defendant files a motion for clarification and rehearing after this Court per curiam affirmed the denial of his motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850.

We grant his motion and withdraw the previous opinion. Upon reconsideration of the record, we find that Defendant's August 23, 2010 motion for postconviction relief was untimely. *State v. Green*, 944 So. 2d 208 (Fla.2006). *Padilla v. Kentucky*,— U.S. —, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), does not apply retroactively to this 2004 plea. See *Davis v. State*, 69 So. 3d 315 (Fla. 4th DCA 2011) (citing *Hernandez v. State*, 61 So. 3d 1144 (Fla. 3d DCA 2011)); *Barrios-Cruz v. State*, 63 So. 3d 868 (Fla. 2d DCA 2011).

Affirmed.

STEVENSON, TAYLOR and LEVINE, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jeffrey Levenson, Judge; L.T. Case No. 94-15010 CF10A.

Hilliard E. Moldof, Fort Lauderdale, for appellant.

No appearance required for appellee.