

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

PEDRO CIFUENTES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D11-3972

[September 5, 2012]

PER CURIAM.

We affirm the summary denial of appellant's motion for postconviction relief, which challenged his 1996 no contest plea to charges of resisting with violence and battery. His claims are procedurally barred as untimely. Fla. R. Crim. P. 3.850(b). We reject his claim that *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), is retroactive. *Hernandez v. State*, 61 So.3d 1144 (Fla. 3d DCA 2011), *rev. granted*, 81 So.3d 414 (Fla. 2012); *Davis v. State*, 69 So.3d 315 (Fla. 4th DCA 2011).

Further, even if *Padilla* is found to be retroactive, appellant does not allege that the court failed to give the standard deportation warning of Florida Rule of Criminal Procedure 3.172(c)(8), and his claim is insufficient to merit relief. *See Flores v. State*, 57 So.3d 218 (Fla. 4th DCA 2010), *petition for review pending*, No. SC11-989.

Affirmed.

STEVENSON, TAYLOR and HAZOURI, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Geoffrey Cohen, Judge; L.T. Case No. 96-12515 CF10A.

Pedro Cifuentes, West Park, Pro Se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.