

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

CARLOS VIERA, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

Case No. 2D11-4093

Opinion filed February 12, 2014.

Petition Alleging Ineffective Assistance  
of Appellate Counsel. Manatee County;  
Debra Johnes Riva, Judge.

Carlos Viera, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Diane F. Medley and  
Nancy Jack, Assistant Attorneys General,  
Tampa, for Appellee.

PER CURIAM.

In his petition filed pursuant to Florida Rule of Appellate Procedure  
9.141(d), Carlos Viera contends that his appellate counsel was ineffective for failing to  
argue that the then-standard jury instruction for manslaughter by act as given to the jury  
in Viera's trial for second-degree murder was fundamental error. Based on the facts of  
Viera's case and for the reasons discussed in Horne v. State, 39 Fla. L. Weekly D49

(Fla. 2d DCA Dec. 27, 2013), we are constrained to reverse Viera's second-degree murder conviction and remand for a new trial.

Reversed and remanded.

CASANUEVA, MORRIS, and BLACK, JJ., Concur.