

Third District Court of Appeal

State of Florida

Opinion filed December 14, 2016.
Not final until disposition of timely filed motion for rehearing.

No. 3D14-1025
Lower Tribunal No. 06-16991

Derrick McPhee,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, William L. Thomas, Judge.

Joseph W. Gibson, Jr., for appellant.

Pamela Jo Bondi, Attorney General, and Jill D. Kramer, Assistant Attorney General, for appellee.

Before SUAREZ, C.J., and WELLS and FERNANDEZ, JJ.

SUAREZ, C.J.

ON MOTION FOR REHEARING

The State of Florida moves for rehearing of this Court's denial of its motion to recall the August 29, 2014 mandate in order to allow appellate review of

transcripts from a Rule 3.850 evidentiary hearing. Although we grant the State's motion for rehearing, withdraw our prior November 3, 2016 opinion and substitute it with the following, we do so solely to correct the legal basis for denying the State's motion to recall the mandate.

We agree with the State that State Farm Mut. Auto Ins. Co. v. Judges of the District Court, 405 So. 2d 980, 982 (Fla. 1981) is no longer valid in light of the Florida State legislature's repeal of Florida Statute section 35.10 by Laws 2013, c. 2013-25, § 1, effective January 1, 2014. That repeal eliminated terms of court for purposes of recalling an appellate mandate. The Court's ability to recall a mandate, however, is still limited by Florida Rule of Appellate Procedure 9.340(a), which states that "the court may direct the clerk to recall the mandate, but not more than 120 days after its issuance." Because the State moved to recall the mandate more than 120 days from its issuance on August 29, 2014, this Court is without jurisdiction to recall the mandate.

Motion for rehearing granted and denial of the motion to recall the mandate and to reopen the case affirmed.