

Third District Court of Appeal

State of Florida, January Term, A.D. 2012

Opinion filed January 25, 2012.

Not final until disposition of timely filed motion for rehearing.

No. 3D11-2059

Lower Tribunal No. 09-13249

Keyion Gale,
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, Jorge Cueto, Judge.

C. Marie Brevitt-Schoop and Orville McKenzie, for appellant.

Pamela Jo Bondi, Attorney General, for appellee.

Before WELLS, C.J., and FERNANDEZ, J., and SCHWARTZ, Senior Judge.

WELLS, Chief Judge.

Keyion Gale appeals from an order denying as untimely his Florida Rule of Criminal Procedure 3.850 motion to vacate his no contest plea, which was entered on May 9, 2009. The postconviction motion, which was filed on July 12, 2011, claimed that the trial court failed to inform Gale of the deportation consequences of his plea as required by Florida Rule of Criminal Procedure 3.172(c)(8). We affirm the denial of this claim because it was not raised within the two-year period prescribed by Rule 3.850. See State v. Green, 944 So. 2d 208, 219 (Fla. 2006) (providing that “a defendant seeking to withdraw a plea because the trial court did not advise the defendant of the possibility of deportation as part of the plea colloquy must file a rule 3.850 motion within two years after the judgment and sentence become final”). The postconviction motion also claimed that trial counsel failed to advise Gale that accepting a plea would subject him to deportation, citing to Padilla v. Kentucky, --- U.S. ---, 13. S. Ct. 1473, 176 L. Ed. 2d 284 (2010). We affirm the denial of this claim as this court has found that Padilla has no retroactive effect, and thus does not apply to pleas taken before Padilla was announced. See Hernandez v. State, 61 So. 3d 1144 (Fla. 3d DCA 2011).

Affirmed.