

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2012

JUAN PEREZ,

Appellant,

v.

Case No. 5D10-4018

STATE OF FLORIDA,

Appellee.

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Opinion filed April 5, 2012

Appeal from the Circuit Court  
for Osceola County,  
Scott Polodna, Judge.

James S. Purdy, Public Defender, and  
Rose M. Levering, Assistant Public  
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Anthony J. Golden,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

ON MOTION FOR REHEARING.

PER CURIAM.

We grant the motion for rehearing filed by Appellant, Juan Perez, withdraw our earlier per curiam affirmance, and substitute the following opinion in its place.

We affirm and write to address only one issue. As to the Shelton<sup>1</sup> issue, we affirm based on Flagg v. State, 74 So. 3d 138 (Fla. 1st DCA 2011). We certify that the same issue reviewed in this case is currently pending before the Florida Supreme Court. State v. Adkins, 71 So. 3d 184 (Fla. 2d DCA), review granted, 71 So. 3d 117 (Fla. 2011). The mandate will be withheld pending final disposition of Adkins.

AFFIRMED.

SAWAYA, PALMER and JACOBUS, JJ., concur.

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<sup>1</sup> Shelton v. Sec'y, Dep't of Corr., 802 F. Supp. 2d 1289 (M.D. Fla. 2011).