

Supreme Court of Florida

No. SC10-1350

MYNOR SOLANO,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[October 27, 2011]

LABARGA, J.

Mynor Solano seeks review of the decision of the Third District Court of Appeal in Solano v. State, 35 So. 3d 930 (Fla. 3d DCA 2010), on the ground that it expressly and directly conflicts with a decision of this Court, State v. Montgomery, 39 So. 3d 252 (Fla. 2010), on a question of law. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

In State v. Montgomery, 39 So. 3d 252 (Fla. 2010), we held that because defendant Montgomery, who was convicted of second-degree murder, was entitled to an accurate jury instruction on the necessarily lesser included offense of manslaughter by act, the use of the then-standard jury instruction on manslaughter

by act constituted fundamental reversible error in his case because it erroneously required the jury to find that the defendant intentionally caused the death of the victim. We then affirmed the district court's reversal of Montgomery's conviction for second-degree murder.

Solano seeks review in this Court on the grounds that the district court's decision in his case conflicts with our decision in Montgomery. Having issued its decision in Solano one day before we issued our opinion in Montgomery, the district court did not have the benefit of considering Montgomery. Accordingly, we accept jurisdiction and grant Solano's petition for review. The decision under review is quashed, and this matter is remanded to the Third District Court of Appeal for reconsideration upon application of our decision in Montgomery.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, and PERRY, JJ., concur.

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

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Third District - Case No. 3D07-3210

(Dade County)

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for Petitioner

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, Richard L. Polin, Bureau Chief, and Douglas J. Gaid, Assistant Attorneys General, Miami, Florida,

for Respondent