

# Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed September 9, 2009.

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No. 3D08-631  
Lower Tribunal No. 94-25309

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**Marlon Antonio Ruiz,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

Law Offices of Eduardo Soto, P.A., and Kate Walling, Karina Acevedo, and Karla Lammers, for appellant.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, for appellee.

Before RAMIREZ, C.J., and GERSTEN, J., and SCHWARTZ, Senior Judge.

On Motion for Rehearing

SCHWARTZ, Senior Judge.

Ruiz's motion for rehearing of the per curiam affirmance of the denial of his Peart 3.850 motion is itself denied because (1) he did not carry his burden of

establishing that the arguably invalid conviction challenged in this proceeding was the sole cause of his potential deportation, see *Prieto v. State*, 824 So. 2d 924 (Fla. 3d DCA 2002), review denied, 842 So. 2d 845 (Fla. 2003); *Buton v. State*, 995 So. 2d 1130 (Fla. 4th DCA 2008), and (2) the contention that other convictions which would also have had that effect might be excused by the immigration authorities is not cognizable under what we believe to be the now-controlling authority in this district, *State v. Tabuteau*, \_\_\_ So. 3d \_\_\_ (Fla. 3d DCA Case no. 3D08-1164, opinion filed, August 26, 2009), in which the court recently held that

[d]efendant's claim that, but for the conviction in this case, he might be entitled to an adjustment in his immigration status is too speculative to merit relief. A state court is not a proper forum to litigate whether appellant would have received an adjustment in his immigration status. This determination is within the exclusive discretion of federal officials. 8 U.S.C. § 1255 (2000). *Rosas [v. State]*, 991 So. 2d 1003, 1003-04 (Fla. 4th DCA 2008)].

But cf. *Dumenigo v. State*, 988 So. 2d 1201 (Fla. 3d DCA 2008); *Ojurongbe v. State*, 973 So. 2d 621 (Fla. 3d DCA 2008).

Rehearing denied.