

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed January 27, 2010

Not final until disposition of timely filed motion for rehearing.

No. 3D08-2815

Lower Tribunal No. 90-24226E

Terrance Aikens,
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, Diane Ward, Judge.

Clayton R. Kaeiser, for appellant.

Bill McCollum, Attorney General, and Rolando A. Soler, Assistant Attorney General, for appellee.

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

PER CURIAM.

Affirmed.

The claim was time-barred, see Hughes v. State, 2009 WL 3787067 (Fla. 2d DCA Nov. 13, 2009). In addition, under the facts of this case, the erroneous use of

“and/or” in the jury instruction did not constitute fundamental error, see Garzon v. State, 980 So. 2d 1038 (Fla. 2008).