

# Supreme Court of Florida

TUESDAY, NOVEMBER 14, 2006

CASE NO.: SC05-1610

Lower Tribunal No.: F88-5546

GUILLERMO OCTAVIO ARBELAEZ vs. STATE OF FLORIDA

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Appellant(s)

Appellee(s)

Guillermo Octavio Arbelaez, a prisoner under sentence of death, appeals the circuit court's summary denial of his successive motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. We have jurisdiction. See art. V, §§ 3(b)(1), Fla. Const. Arbelaez seeks an evidentiary hearing regarding his claim of mental retardation pursuant to Florida Rule of Criminal Procedure 3.203 and Adkins v. Virginia, 536 U.S. 304 (2002).

The plain language of Rule 3.203(e) requires an evidentiary hearing whenever a defendant under sentence of death timely seeks a determination of mental retardation. Accordingly, we reverse the circuit court's summary denial and remand this case to the circuit court, directing that it hold an evidentiary hearing specifically and directly addressing Arbelaez's mental retardation claim as required by the rule.

It is so ordered.

WELLS, ANSTEAD, PARIENTE, QUINCE and CANTERO, JJ., concur.  
LEWIS, C.J., and BELL, J., dissent.

A True Copy

Test:



Thomas D. Hall  
Clerk, Supreme Court



kb

Served:

SALLY WEINTRAUB

TODD G. SCHER

LESLIE CAMPBELL

HON. DIANE WARD, JUDGE

HON. HARVEY RUVIN, CLERK