

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

REINALDO VALDES,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D09-3076

Opinion filed February 5, 2010.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Richard A. Luce, Judge.

WHATLEY, Judge.

Reinaldo Valdes appeals the summary denial of his motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850, which raised two claims that he was improperly convicted of failure to appear. We affirm because both of these claims are cognizable only on direct appeal. However, it appears that Valdes has until March 25, 2010, to file another rule 3.850 motion. If his allegations are true, Valdes may have a viable claim that his counsel was ineffective for failing to advise

him of an available defense. See Grosvenor v. State, 874 So. 2d 1176, 1181 (Fla. 2004). Such a claim would not be considered successive.

Affirmed.

VILLANTI and LaROSE, JJ., Concur.