

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D16-2188

LIDALE R. KELLUM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Hentz McClellan, Judge.

May 18, 2018

PER CURIAM.

Lidale R. Kellum appeals the trial court's denial of his motion seeking postconviction relief based on newly discovered evidence. Because the evidence on which Kellum relied was discoverable at the time of his violation of probation hearing, the trial court properly denied the motion. *See Rutherford v. State*, 926 So. 2d 1100, 1107 (Fla. 2006) (holding that newly discovered evidence must be based on facts that were unknown to the trial court, appellant, and his counsel at the time of trial and that neither the appellant nor his counsel could have discovered the facts through the exercise of due diligence).

AFFIRMED.

B.L. THOMAS, C.J., and ROWE and WINSOR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Henry Sims, Public Defender, Panama City, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, for Appellee.