

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

WILLIAM D. ELLIOTT,
Petitioner,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D11-5070

STATE OF FLORIDA,
Respondent.

Opinion filed June 8, 2012.

Petition for Writ of Habeas Corpus.

Jeffrey A. Siegmeister, Lake City, for Petitioner.

Pamela Jo Bondi, Attorney General, and Donna A. Gerace, Assistant Attorney
General, Tallahassee, for Respondent.

PER CURIAM.

We treat this petition for habeas corpus alleging ineffective assistance of appellate counsel as a timely petition under rule 9.141(d) and deny the petition on the merits. The two issues Petitioner contends appellate counsel should have raised on direct appeal are meritless; the trial court properly found that Petitioner waived his

right to conflict-free counsel and the trial court did not abuse its discretion in denying the motion for new trial based upon an isolated comment by the prosecutor that could be inferred as a comment on Petitioner's right to remain silent. Because these issues are meritless, appellate counsel was not ineffective for failing to raise the issues. See Rutherford v. Moore, 774 So. 2d 637, 643 (Fla. 2000) ("If a legal issue would in all probability been found to be without merit had counsel raised the issue on direct appeal, the failure of appellate counsel to raise the meritless issue will not render appellate counsel's performance ineffective.").

DENIED.

DAVIS, WETHERELL, and SWANSON, JJ., CONCUR.