

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed November 19, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-2539
Lower Tribunal Nos. 76-417B; 76-2588B

Derek D. Archie,
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, Peter Adrien, Judge.

Derek D. Archie, in proper person.

Bill McCollum, Attorney General, for appellee.

Before SUAREZ, CORTIÑAS, and ROTHENBERG, JJ.

SUAREZ, J.

The defendant appeals from the trial court's order denying his petition filed under Rule 3.850, Florida Rules of Criminal Procedure. We affirm the trial court's order.

The defendant's petition is time-barred as it is beyond the two year statute of limitations. His direct appeal became final in 1983. Archie v. State, 430 So. 2d 461 (Fla. 3d DCA 1983). Additionally, the petition is successive as it is the defendant's third post-conviction appeal seeking relief based on claims of ineffective assistance of trial counsel. See Archie v. State, 420 So. 2d 388 (Fla. 3d DCA 1982); Archie v. State, 496 So. 2d 976 (Fla. 3d DCA 1986). The claims are not newly discovered. The defendant's claims of ineffectiveness of counsel could have and should have been known at the time of trial, and definitely within two years of the date of conviction.

For the above reasons, we affirm the trial court's denial.