

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2006

HERBERT N. PRICE,

Appellant,

v.

Case No. 5D06-1185

STATE OF FLORIDA,

Appellee.

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Opinion filed August 11, 2006

Appeal from the Circuit Court  
for Volusia County,  
Julianne Piggotte, Judge.

Herbert N. Price, Okeechobee, Pro Se.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Kellie Nielan, Assistant  
Attorney General, Daytona Beach, for  
Appellee.

PER CURIAM.

Herbert N. Price appeals the trial court's denial of his petition for writ of habeas corpus. Price was convicted of sexual battery on a physically incapacitated person and sentenced to prison in March 2003. He voluntarily dismissed his appeal. In March 2005, Price filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, claiming ineffective assistance of trial counsel. The trial court held an evidentiary hearing on six of Price's claims, summarily denying only one. Following the

evidentiary hearing, the trial court denied relief. Price's appeal of that order is pending in this Court. See Price v. State, No. 5D06-890 (Fla. 5th DCA filed Mar. 16, 2006).

Price then filed a petition for writ of habeas corpus with the trial court, alleging that the information charging him with the crime was fatally defective as it failed to allege an essential element of the offense. The trial court correctly held that a habeas corpus petition cannot be used to litigate matters that could have and should have been raised on direct appeal. This includes the legal sufficiency of the information. See Moore v. State, 817 So. 2d 1072 (Fla. 5th DCA 2002).

AFFIRMED.

PLEUS, C.J., ORFINGER and MONACO, JJ., concur.