

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

CHARLES JASON GRAVES, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 )  
 \_\_\_\_\_ )

CASE NO. 2D01-4855

Opinion filed February 13, 2002.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court  
for Collier County,  
William L. Blackwell, Judge.

Stephen M. Grogoza, Naples,  
for Appellant.

DAVIS, Judge.

Charles Jason Graves appeals the trial court's order summarily dismissing his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850 and the trial court's denial of his motion to disqualify the trial judge. Graves and his codefendant were each charged with three counts of first-degree murder and

robbery as the result of a robbery of a Cracker Barrel restaurant. They were tried at separate jury trials, and each was convicted as charged. Graves was tried first.

In his motion for postconviction relief, Graves alleged that the State made inconsistent arguments at the two trials. The State had argued in trial that certain facts supported Graves' conviction. However, the State argued in the codefendant's trial that those same facts supported the codefendant's conviction. Graves contends that had the State made the same argument at his trial as it made at the codefendant's trial, he would not have been convicted.

The trial court summarily dismissed the motion, finding that this issue was not cognizable by a 3.850 motion and that it should have been raised on direct appeal. Although we disagree with the trial court's reasoning, we agree that dismissal was appropriate as Graves failed to present a facially sufficient motion that would entitle him to relief.

The trial court denied the motion to disqualify as being untimely, and we agree. See Fla. R. Jud. Admin. 2.160(e).

Affirmed.

SALCINES, J., and DANAHY, PAUL W., SENIOR JUDGE, Concur.