

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JERRY McAFFEE,)	
)	
Appellant,)	
)	
v.)	Case No. 2D05-4190
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
)	
_____)	

Opinion filed March 8, 2006.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Robert E. Beach,
Senior Judge.

KELLY, Judge.

Jerry McAfee appeals the summary dismissal of his petition for writ of habeas corpus and the denial of his motion for rehearing, alleging three claims of prosecutorial misconduct. Because McAfee is precluded from raising his claims in a petition for writ of habeas corpus, we affirm the order of the trial court dismissing McAfee's petition. See White v. Dugger, 511 So. 2d 554 (Fla. 1987) (holding that habeas corpus is not the

proper vehicle to raise issues that should have and could have been raised on direct appeal or in a Florida Rule of Criminal Procedure 3.850 proceeding). Our affirmance is without prejudice to any right McAfee may have to file a timely, facially sufficient rule 3.850 motion based on newly discovered evidence. See Ford v. State, 912 So. 2d 388 (Fla. 2d DCA 2005). Any such motion will not be considered successive.

Affirmed.

STRINGER and VILLANTI, JJ., Concur.