

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DONALD WALKER,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D01-1619

Opinion filed September 12, 2001.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Highlands County;
J. David Langford, Judge.

FULMER, Acting Chief Judge.

Donald Walker appeals the denial of his petition for writ of error coram nobis. He states he was convicted of first-degree murder in 1960 and received a sentence of life imprisonment. The trial court treated Walker's request for relief as a motion filed pursuant to Florida Rule of Criminal Procedure 3.850 and denied it as untimely. The trial court proceeded to state that even if the request was treated as a

petition for coram nobis relief that it should be denied because Walker failed to allege newly discovered evidence. We affirm the trial court's order on other grounds.

Because it appears Walker is in custody on the conviction he seeks to collaterally attack, he is not entitled to coram nobis relief. See Richardson v. State, 546 So. 2d 1037 (Fla. 1989); Martin v. State, 789 So. 2d 432 (Fla. 4th DCA June 20, 2001) (stating that coram nobis is not available to persons in custody). Therefore, he is not entitled to avail himself of the two-year time frame established in Wood v. State, 750 So. 2d 592 (Fla. 1999).

Affirmed.

STRINGER and DAVIS, JJ., Concur.