Third District Court of Appeal

State of Florida

Opinion filed September 18, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-249
Lower Tribunal No. 09-13518A

Linaker Charlemagne,
Appellant,

vs.

The State of Florida,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Nushin G. Sayfie, Judge.

Carlos J. Martinez, Public Defender, and Susan Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Jeffrey R. Geldens, Assistant Attorney General, for appellee.

Before FERNANDEZ, MILLER, and GORDO, JJ.

PER CURIAM.

Affirmed. See Medina v. State, 573 So. 2d 293, 295 (Fla. 1990) ("Allegations of ineffective assistance cannot be used to circumvent the rule that postconviction proceedings cannot serve as a second appeal.") (citations omitted); Smith v. State, 445 So. 2d 323, 325 (Fla. 1983) ("Issues which either were or could have been litigated . . . upon direct appeal are not cognizable through collateral attack.") (citations omitted); see also State v. Bright, 200 So. 3d 710, 737 (Fla. 2016) ("[A] failure to present cumulative evidence does not establish unconstitutional ineffective assistance of counsel because its omission neither constitutes deficient performance nor results in sufficient prejudice."); Chandler v. State, 848 So. 2d 1031, 1046 (Fla. 2003) (When a defendant cannot "show the comments [made during closing argument by the prosecutor] were fundamental error on direct appeal, he likewise cannot show that trial counsel's failure to object to the comments resulted in prejudice sufficient to undermine the outcome of the case under the prejudice prong of the Strickland[1] test.") (citation omitted); Solorzano v. State, 25 So. 3d 19, 23 (Fla. 2d DCA 2009) ("A claim that counsel was ineffective for failing to 'follow-up' on questioning to establish grounds for a for-cause challenge has been held to be legally insufficient because such a claim can be based on nothing more than conjecture by the defendant.") (citing Reaves v. State, 826 So. 2d 932, 939 (Fla. 2002)); see, e.g., Bradley v. State, 33 So. 3d 664, 684 (Fla. 2010) ("Where . . . the alleged errors urged

[1] Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

for consideration in a cumulative error analysis 'are either meritless, procedurally barred, or do not meet the Strickland standard for ineffective assistance of counsel[,] . . . the contention of cumulative error is similarly without merit.'") (second and third alterations in original) (citation omitted).