

Third District Court of Appeal

State of Florida

Opinion filed March 27, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1968
Lower Tribunal No. 09-5299

Luis Morey,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Diane Ward, Judge.

Luis Morey, in proper person.

Ashley Moody, Attorney General, and G. Raemy Charest-Turken, Assistant Attorney General, for appellee.

Before EMAS, C.J., and SCALES and LINDSEY, JJ.

PER CURIAM.

Affirmed. See Johnson v. State, 769 So. 2d 990 (Fla. 2000) (holding movant is procedurally barred from seeking postconviction relief on a substantive claim that was or should have been raised on direct appeal; movant may not avoid this procedural bar by merely recasting substantive claim as one for ineffective assistance of counsel). See also Reed v. State, 116 So. 3d 260, 264 (Fla. 2013) (holding: “To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements: (1) the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence; and (2) the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial”) (citing Jones v. State (*Jones II*), 709 So.2d 512, 521 (Fla.1998)).