Third District Court of Appeal

State of Florida

Opinion filed November 13, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2479
Lower Tribunal No. 08-41578

Maykel Beiro,
Petitioner,

vs.

The State of Florida,
Respondent.

A Case of Original Jurisdiction – Habeas Corpus.

Maykel Beiro, in proper person.

Ashley Moody, Attorney General, and Jonathan Tanoos (Tampa), Assistant Attorney General, for respondent.

Before EMAS, C.J., and FERNANDEZ and LOGUE, JJ.

EMAS, C.J.

In 2012, Maykel Beiro was convicted of and sentenced for second-degree murder and aggravated battery. His convictions and sentences were affirmed by this court, and our mandate issued on May 17, 2013. See Beiro v. State, 140 So. 3d 590 (Fla. 3d DCA 2013).

Thereafter, Beiro filed several motions for postconviction relief, including a 2013 petition for writ of habeas corpus alleging ineffective assistance of appellate counsel. That petition was denied, see Beiro v. State, 177 So. 3d 264 (Fla. 3d DCA 2014), and his subsequent postconviction motions, filed pursuant to Florida Rule of Criminal Procedure 3.850, were denied by the trial court.

On December 7, 2018, Beiro filed the instant petition, once again alleging ineffective assistance of appellate counsel, and raising a claim not asserted in the prior petition. Although Beiro acknowledges that the instant petition is both successive and untimely, he contends that these procedural bars should be relaxed to correct a manifest injustice. Beiro is incorrect. The mere incantation of the words "manifest injustice" does not make it so. Beiro has failed to allege any facts—nor can he—to justify invoking the extremely limited concept of manifest injustice to excuse a procedural bar and allow us to review the merits of his instant claim. See, e.g., Cuffy v. State, 190 So. 3d 86, 87 (Fla. 4th DCA 2015) (noting: "The term 'manifest injustice,' which has been acknowledged as an exception to procedural bars to postconviction claims in only the rarest and most exceptional of situations,

now is abused widely by postconviction litigants"); Hall v. State, 94 So. 3d 655 (Fla. 1st DCA 2012); Stephens v. State, 974 So. 2d 455, 457 (Fla. 2d DCA 2008). There is little doubt that every defendant believes they will suffer a "manifest injustice" if their postconviction claim is deemed foreclosed by the passage of time. However, a defendant does not have an unlimited right to continue to litigate (and relitigate) the validity of their conviction, and such a limited right must be balanced against the State's competing and substantial interest in the finality of judgments in criminal cases. As the Florida Supreme Court observed in Witt v. State, 387 So. 2d 922, 925 (Fla. 1980):

> The importance of finality in any justice system, including the criminal justice system, cannot be understated. It has long been recognized that, for several reasons, litigation must, at some point, come to an end. In terms of the availability of judicial resources, cases must eventually become final simply to allow effective appellate review of other cases. There is no evidence that subsequent collateral review is generally better than contemporaneous appellate review for ensuring that a conviction or sentence is just. Moreover, an absence of finality casts a cloud of tentativeness over the criminal justice system, benefitting neither the person convicted nor society as a whole.

Striking that proper balance, the Florida Supreme Court promulgated Florida Rule of Appellate Procedure 9.141(d)(5) which provides:

> Time Limits. A petition alleging ineffective assistance of appellate counsel on direct review shall not be filed more than 2 years after the judgment and sentence become final on direct review unless it alleges under oath with a specific factual basis that the petitioner was affirmatively misled about the results of the appeal by counsel. In no case shall a petition alleging ineffective assistance of appellate counsel

> on direct review be filed more than 4 years after the judgment and sentence become final on direct review.

Beiro filed this successive petition more than four years after his judgment and sentence became final on direct review,[1] and there are no circumstances to warrant application of the narrow "manifest injustice" exception. We therefore dismiss this petition.

[1] See McDade v. State, 239 So. 3d 128, 128 (Fla. 3d DCA 2018) (noting that where there has been a direct appeal "the judgment and sentence become final upon the issuance of the appellate court's mandate on the direct appeal") (citing Beaty v. State, 701 So. 2d 856, 857 (Fla. 1997)). The mandate issued on Beiro's direct appeal on May 17, 2013. The instant petition was filed more than five and one-half years later, on December 7, 2018. See also Fla. R. App. P. 9.141(d)(6)(C) (providing: "The court may dismiss a second or successive petition if it does not allege new grounds and the prior determination was on the merits, or if a failure to assert the grounds was an abuse of procedure").