

Third District Court of Appeal

State of Florida

Opinion filed June 24, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-0851
Lower Tribunal No. 00-4068A

Ernst Anicet,
Petitioner,

vs.

Mark Inch,
Respondent.

A Case of Original Jurisdiction – Habeas Corpus.

Ernst Anicet, in proper person.

Ashley Moody, Attorney General, for respondent.

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

PER CURIAM.

Petitioner, Ernst Anicet, seeks relief in habeas corpus, alleging ineffective assistance of trial counsel. In his petition, Anicet asserts his attorney misadvised

him of the maximum penalty for the primary offense for which he was charged, and, as a result, caused him to reject a favorable plea offer. Notwithstanding the fact that habeas remains an improper procedural vehicle for the instant claim, Marshall v. Dugger, 526 So. 2d 143, 145 (Fla. 3d DCA 1988) (“As to any allegation of ineffective assistance of trial counsel, such a claim is not cognizable under a petition for writ of habeas corpus but is reviewable by a Rule 3.850 . . . motion.”) (citation omitted), the allegation here is identical to that raised and rejected in a previously-adjudicated petition and is wholly refuted by the record.¹ Anicet v. Jones, 245 So. 3d 992 (Fla. 3d DCA 2018). Accordingly, we deny relief.

Denied.

¹ Moreover, as Anicet’s judgment and sentence became final in 2004, the petition is procedurally barred. See Baker v. State, 878 So. 2d 1236, 1245 (Fla. 2004) (“The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850.”) (citation omitted); Calloway v. State, 699 So. 2d 849, 849 (Fla. 3d DCA 1997) (“A petition for habeas corpus cannot be used to circumvent the two-year period for filing motions for postconviction relief.”) (citations omitted).