

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed November 12, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-2384
Lower Tribunal No. 00-33908

Reinaldo A. Melara,
Petitioner,

vs.

The State of Florida,
Respondent.

A case of original jurisdiction – Habeas Corpus.

Reinaldo A. Melara, in proper person.

Bill McCollum, Attorney General, for respondent.

Before RAMIREZ and ROTHENBERG, JJ., and SCHWARTZ, Senior Judge.

RAMIREZ, J.

Reinaldo A. Melara filed a pro se Petition for Writ of Habeas Corpus for Belated Appeal to raise a claim of ineffective assistance of appellate counsel. He was found guilty of manslaughter with a deadly weapon and attempted second-

degree murder with a firearm, and was duly sentenced. According to the petition, Melara's conviction and sentence were affirmed on June 15, 2005. The mandate issued on July 1, 2005.

Melara filed the instant habeas corpus petition on September 17, 2008, alleging ineffective assistance of appellate counsel. Under rule 9.141(c)(4)(B), Florida Rules of Appellate Procedure, a petition alleging ineffective assistance of appellate counsel on direct review must not be filed more than two years after the judgment and sentence became final on direct review, unless the petition alleges under oath with a specific factual basis that the petitioner was affirmatively misled about the results of the appeal by counsel. As Melara has not alleged that he was misled, his petition had to be filed by July 1, 2007.

Because Melara's petition is untimely and because he does not provide any explanation why he has waited over three years to challenge the performance of appellate counsel, this petition is hereby denied.