

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002

RICHARDSON FRANCOIS,

**

Appellant,

** CASE NO. 3D02-2494

vs.

** LOWER

TRIBUNAL NO. 96-7212

THE STATE OF FLORIDA,

**

Appellee.

**

Opinion filed October 23, 2002.

An Appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit
Court for Dade County, Scott J. Silverman, Judge.

Richardson Francois, in proper person.

Robert A. Butterworth, Attorney General, for appellee.

Before JORGENSEN, COPE, and GODERICH, JJ.

PER CURIAM.

Affirmed.

JORGENSEN and GODERICH, JJ., concur.

COPE, J. (concurring).

I do not agree with the trial court's ruling that the motion under Florida Rule of Criminal Procedure 3.850 was impermissibly successive. Defendant-appellant Francois adequately explained that the instant motion could not have been filed until he obtained the trial transcript, whereas the earlier 3.850 motion raised exclusively a sentencing issue under Heggs v. State, 759 So. 2d 620 (Fla. 2000).

On the merits, however, I concur in affirming the order denying Rule 3.850 relief. After taking judicial notice of the briefs in the direct appeal, it is clear that the claims do not satisfy the standard for Strickland v. Washington, 466 U.S. 668 (1984). While the defendant claims that alibi witnesses, whom he has identified, would exculpate him, the defendant has not stated what the substance of their testimony would be, and how that would apply to the facts of his case.