

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2004

MAGELA ELOISAINT,

**

**

Appellant,

**

CASE NO. 3D03-581

vs.

**

THE STATE OF FLORIDA,

**

LOWER TRIBUNAL

CASE NO. 86-25136

Appellee.

**

Opinion filed March 31, 2004.

An Appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit
Court of Miami-Dade County, Dennis Murphy, Judge.

Ana M. Davide, for appellant.

Charles J. Crist, Jr., Attorney General, and Richard L. Polin,
Assistant Attorney General, for appellee.

Before FLETCHER, RAMIREZ, and SHEPHERD, JJ.,

PER CURIAM.

Magela Eloisaint appeals from the trial court's denial of
relief pursuant to Florida Rule of Criminal Procedure 3.850. We
affirm.

This is Eloisaint's second petition for 3.850 relief, filed beyond the two-year window set forth in that rule. See also Peart v. State, 756 So. 2d 42 (Fla. 2000). The petitioner's claim for relief sets forth facts that were or could have been known at the time of her first 3.850 petition, which was also filed beyond the two-year filing window. See Foster v. State, 614 So. 2d 455, 458 (Fla. 1992) ("A successive motion may be dismissed if it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to raise those issues in a prior motion constitutes an abuse of process. To overcome this bar, a movant must allege that the grounds asserted were not known and could not have been known to him at the time of the earlier motion.").

Affirmed.