

Supreme Court of Florida

No. 68,588

DANIEL MORRIS THOMAS, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[April 14, 1986]

BOYD, C.J.

This is an appeal from the order of the circuit court denying the motion of Daniel Morris Thomas for post-conviction relief under Florida Rule of Criminal Procedure 3.850. We affirm the order of the trial court.

Appellant was convicted of first-degree murder and other crimes and was sentenced to death. His convictions and sentence were affirmed on appeal. Thomas v. State, 374 So.2d 508 (Fla. 1979), cert. denied, 445 U.S. 972 (1980). He later filed a motion to vacate and a petition for habeas corpus. This Court affirmed the denial of post-conviction relief and denied the habeas petition. Thomas v. State, 421 So.2d 160 (Fla. 1982). Thomas also sought a writ of habeas corpus in United States District court. The court's denial of relief was affirmed on appeal. Thomas v. Wainwright, 767 F.2d 738 (11th Cir. 1985), cert. denied, 106 S.Ct 1241 (1986). Recently Thomas filed a second petition for habeas corpus with this Court. We denied the petition. Thomas v. Wainwright, No. 68,526 (Fla. April 7, 1986).

All of the claims in appellant's current motion are matters that should have been raised at trial and on appeal, that could have been raised on appeal but were not, that were

presented on appeal and decided adversely to appellant's position, that were raised and rejected in one of appellant's previous collateral challenges, or that were inexcusably omitted from his previous rule 3.850 motion. See Adams v. State, No. 68,392 (Fla. March 3, 1986). We therefore find that the trial court was correct in denying the present motion without an evidentiary hearing. The record conclusively shows that appellant is not entitled to have the judgment or sentence vacated, set aside, or modified.

The order of the circuit court denying the motion for post-conviction relief is affirmed. The motion for stay of execution is denied.

No petition for rehearing will be permitted in this case.

It is so ordered.

ADKINS, OVERTON, McDONALD and EHRLICH, JJ., Concur
SHAW and BARKETT, JJ., Dissent

An Appeal from the Circuit Court in and for Polk County,

Edward F. Threadgill, Jr., Judge - Case Nos. CF-76-1105 &
CF-76-2498

Larry Helm Spalding, Capital Collateral Representative; Mark Evan Olive, Litigation Director; and Michael A. Mello and David A. Reiser, Assistant Capital Collateral Representatives of the Office of The Capital Collateral Representative, Tallahassee, Florida,

for Appellant

Jim Smith, Attorney General and Theda R. James, Assistant Attorney General, Tampa, Florida,

for Appellee