

Supreme Court of Florida

No. 71,261

DAVID ROSS DELAP, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[October 13, 1987]

PER CURIAM.

Delap appeals the denial of his second motion for postconviction relief* and seeks a stay of execution pending disposition of his appeal. The motion is procedurally barred for each of the reasons stated below:

(1) The motion was not filed by January 1, 1987, in accordance with the time limitations of Florida Rule of Criminal Procedure 3.850, and none of Delap's claims qualifies as exceptions set forth in that rule.

(2) The motion is a successive motion which constitutes an abuse of procedure. Delap's first two claims which challenge the validity of trial testimony concerning the cause of death of the victim were raised and rejected in Delap's previous motion for postconviction relief. Delap's third claim, predicated upon Caldwell v. Mississippi, 472 U.S. 320 (1985), should have been raised, if at all, in Delap's first motion for postconviction

* The Court affirmed the denial of a previous motion under Florida Rule of Criminal Procedure 3.850 in Delap v. State, 505 So.2d 1321 (Fla. 1987).

relief which was filed more than six months after the United States Supreme Court's opinion in Caldwell.

We, therefore, affirm the order denying postconviction relief and deny Delap's application for a stay of execution. No petition for rehearing will be entertained.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW and GRIMES, JJ.,
Concur
BARKETT, J., Concur specially with an opinion, with which
KOGAN, J., Concur

BARCKETT, J., specially concurring.

I concur because the merits of this appeal from the Court's denial of defendant's 3.850 motion have already been considered and denied by this Court.

KOGAN, J., Concur

An Appeal from the Circuit Court in and for Orange County,
Ted P. Coleman, Judge - Case No. CR-78-2757

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