

Third District Court of Appeal

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

Opinion filed October 15, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-2591
Lower Tribunal No. 98-1995

Juan Leal Esquivel,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Leonard E. Glick, Judge.

Juan Leal Esquivel, in proper person.

Bill McCollum, Attorney General, and Douglas J. Glaid, Senior Assistant Attorney General, for appellee.

Before RAMIREZ, WELLS, and ROTHENBERG, JJ.

ROTHENBERG, J.

The defendant, Juan Leal Esquivel (“Esquivel”), appeals the trial court’s order denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because we conclude that the record provided on appeal does not conclusively refute Esquivel’s claims numbered 29, 30, 32, and 40, we reverse as to those four claims, with instructions to the trial court to either conduct an evidentiary hearing as to those claims, or if the trial court again denies relief as to these claims in a subsequent order, to attach those portions of the record that conclusively refute Esquivel’s entitlement to relief.

As to the remaining claims raised in Esquivel’s motion for postconviction relief, because we find that these claims are either procedurally barred because they could have been or were raised on direct appeal, see § 924.051(5), Fla. Stat. (2003); Fla. R. Crim. P. 3.850(c); Byrd v. State, 597 So. 2d 252 (Fla. 1992) (holding that postconviction relief cannot be based on grounds that were or could have been raised on direct appeal), or they were conclusively refuted by the record, we affirm.

Affirmed in part, reversed in part, remanded with instructions.