

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed September 16, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-1919
Lower Tribunal No. 01-14163

Bernard J. Joseph,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court of Miami-Dade County, Marisa Tinkler Mendez, Judge.

Bernard J. Joseph, in proper person.

Bill McCollum, Attorney General, for appellee.

Before RAMIREZ, C.J., and LAGOA, and SALTER, JJ.

PER CURIAM.

This is an appeal of an order denying a motion under Florida Rule of Criminal Procedure 3.850. On December 31, 2002, Bernard J. Joseph was convicted of one count of First Degree Murder, one count of Armed Robbery with

a Firearm, and one count of Aggravated Assault with a Firearm. On February 10, 2003, Joseph was sentenced to a term of natural life on the counts of First Degree Murder and Armed Robbery with a Firearm and a term of three years in state prison for the Aggravated Assault with a Firearm. On April 8, 2009, Joseph filed a 3.850 motion with the trial court.

The trial court denied the motion as untimely, and Joseph appealed. We agree with the trial court that Joseph's motion was untimely. A rule 3.850 motion must be filed within two (2) years of the court's imposition of the judgment and sentence being final. Dean v. State, 644 So. 2d 122 (Fla. 2d DCA 1994); Fla. R. Crim. P. 3.850. Judgments and sentences are final for 3.850 purposes when any direct review proceedings have concluded and jurisdiction to entertain a 3.850 motion returns to the trial court. Ward v. Dugger, 508 So. 2d 778 (Fla. 1st DCA 1987). Accordingly, Joseph's motion was untimely and he was precluded from seeking this relief.

Affirmed.