

**Third District Court of Appeal**  
**State of Florida, January Term, A.D. 2010**

Opinion filed February 17, 2010.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-3156  
Lower Tribunal Nos. 03-10398

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**Luis A. Chacon**  
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, David Miller, Judge.

Luis A. Chacon, in proper person.

Bill McCollum, Attorney General, for appellee.

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

PER CURIAM.

Affirmed.

COPE, J. (concurring).

I concur in affirming the denial of the appellant's motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a) because the issue the appellant raises on appeal is completely different from the issue the appellant raised in his motion dated September 3, 2009. The trial court erred in denying the motion as being "successive," because as the Florida Supreme Court has explained, there is no "successiveness" bar in rule 3.800(a). State v. McBride, 848 So. 2d 287, 290 (Fla. 2003). Instead, the question is whether the same claim has previously been raised and decided. Id. The trial court's erroneous statement about "successiveness" is, however, harmless under the circumstances of this case.