

# Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed April 07, 2010.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D10-503  
Lower Tribunal No. 06-34678

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**Luis A. Perez,**  
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, Sarah Zabel, Judge.

Luis A. Perez, in proper person.

Bill McCollum, Attorney General, for appellee.

Before SHEPHERD, CORTIÑAS, and ROTHENBERG, JJ.

ROTHENBERG, J.

Luis A. Perez appeals the trial court's order summarily denying his motion for postconviction relief filed pursuant to rule 3.850, Florida Rules of Criminal Procedure. We affirm.

Perez claims that his trial counsel provided ineffective assistance of counsel for failing to file a notice of expiration of speedy trial and requiring the State to try him within the "recapture period." We conclude that the trial court properly denied Perez's motion both on procedural grounds and on the merits. On June 10, 2009, Perez filed his first motion for postconviction relief, which was denied by the trial court on October 30, 2009, and affirmed on appeal. Perez v. State, 23 So. 3d 123 (Fla. 3d DCA 2009). Because the instant claim is one which could have been raised in Perez's first motion for postconviction relief, and his previous motion was decided on the merits, his second rule 3.850 motion was correctly denied as successive. Ragan v. State, 643 So. 2d 1175 (Fla. 3d DCA 1994). We also find that the claim was properly denied on the merits. The record reflects that Perez's trial counsel did file a motion to dismiss the charges on speedy trial grounds on May 1, 2007, the trial court properly heard the motion on May 4, 2007, and Perez was tried on May 10, 2007, within the speedy trial recapture period.

Affirmed.