

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC08-2037
DCA CASE NO. 3D07-2264

**KEAIR S. WALKER
A/K/A KEAR S. WALKER,**

Petitioner,

-vs-

STATE OF FLORIDA

Respondent.

ON APPEAL FROM
THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE FACTS AND THE CASE

The statement of the facts and the case, according to the Third District's written opinion, are as follows:

The petitioner, Keair S. Walker, a/k/a Kear S. Walker ("Walker"), was convicted for first degree murder with a firearm and sentenced to life imprisonment. This Court affirmed Walker's conviction and sentence on October 19, 2005. Walker v. State, 913 So.2d 706 (Fla. 3d DCA 2005). In the instant petition, Walker raises four claims of ineffective assistance of counsel on direct appeal. Walker claims that his appellate counsel was ineffective for failing to raise on direct appeal: (1) this Court's reversal of the trial court's suppression order, State v. Walker, 852 So.2d 863 (Fla. 3d DCA 2003); (2) the trial court's admission of Williams rule evidence; (3) the trial court's failure to give limiting or cautionary instructions to the jury regarding the admission of Williams rule evidence; and (4) trial counsel's failure to object to the jury instructions given by the trial court on justifiable and excusable homicide. For the reasons that follow, we deny Walker's petition.

Walker v. State, 990 So.2d 1119, 1120 (Fla. 3d DCA 2008) (footnote omitted).

In his jurisdictional brief to this Court, Petitioner states: "On June 22, 2006, the Petitioner filed a state habeas corpus which is the petition at bar. In the petition, the Petitioner contends that the district court's reversal of the trial court's suppression order was error." Petitioner's Jurisdictional Brief, p. 2. He then devotes his entire petition to challenging the district court's reversal of the trial court's suppression order in State v. Walker, 852 So.2d 863 (Fla. 3d DCA 2003).

Petitioner is barred from now seeking review of the district court's 2003 decision. He could have done so in 2003 but failed to do so.

To the extent Petitioner seeks to invoke this Court's discretionary jurisdiction to review the denial of his state habeas petition alleging ineffective assistance of appellate counsel in Walker v. State, 990 So.2d 1119 (Fla. 3d DCA 2008), Petitioner claimed only that his appellate counsel was ineffective for failing to raise on direct appeal the district court's reversal of the trial court's suppression order. In denying relief, the district court explained:

We conclude that Walker's first claim, that appellate counsel was ineffective for failing to raise as error on direct appeal this Court's reversal of the trial court's suppression order, is without merit because the issue **was** decided by this Court, Walker, 852 So.2d at 863, and is thus barred by the doctrine of collateral estoppel. See State v. McBride, 848 So.2d 287, 290-91 (Fla.2003) (explaining that collateral estoppel prevents identical parties from relitigating identical issues that have been determined in a contest that results in a final decision of a court of competent jurisdiction). Given the disposition of the issue by this Court, we conclude that appellate counsel was not ineffective for failing to raise the issue on direct appeal. See Mann v. Moore, 794 So.2d 595, 599 (Fla.2001) ("Appellate counsel cannot be ineffective for not raising on direct appeal an issue with little or no merit."); Rutherford v. Moore, 774 So.2d 637, 643 (Fla.2000) (holding that the failure to raise meritless claims on direct appeal will not render appellate counsel ineffective).

Walker v. State, 990 So.2d 1119, 1120 (Fla. 3d DCA 2008) (emphasis in original).

Petitioner cannot, and indeed has not even attempted to, establish that this decision expressly and directly conflicts with a decision of this Court or another district court of appeal.

CONCLUSION

WHEREFORE, the State of Florida respectfully requests an Order of this Court declining to exercise its discretionary review jurisdiction in this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this brief is typed in compliance with the requirements set forth in Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, and that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT was mailed this _____ day of _____, 2008, to Keair S. Walker, B01984, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, Florida 34956.

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