Supreme Court of Florida

FRIDAY, MAY 22, 2009

CASE NO.: SC08-1413
Lower Tribunal No(s).: 89-966

DANIEL JON PETERKA vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Daniel Jon Peterka, a prisoner under sentence of death, appeals the circuit court's order summarily denying a successive motion for postconviction relief, which was filed pursuant to Florida Rule of Criminal Procedure 3.851. Because the order concerns postconviction relief from a sentence of death, this Court has jurisdiction of the appeal under article V, section 3(b)(1), Florida Constitution.

We have previously affirmed Peterka's conviction and sentence of death, see Peterka v. State, 640 So. 2d 59 (Fla. 1994), and also rejected his appeal for the denial of postconviction relief, see Peterka v. State, 890 So. 2d 219 (Fla. 2004). On appeal from the trial court's order denying his successive motion, Peterka asserts that the circuit court erred in summarily denying his motion as untimely and alleges that Florida should recognize an "actual innocence" exception to procedural bars as provided in Schlup v. Delo, 513 U.S. 298 (1995). The decision in Schlup involved a successive federal habeas petition and the appropriate standard for federal courts to apply in determining whether a procedural bar can be avoided in order to resolve the underlying constitutional claims on the merits in a case where a petitioner provided significant evidence of actual innocence. Schlup is not applicable to state court proceedings.

Florida Rule of Appellate Procedure 3.851 provides that a claimant can file a successive postconviction motion where it is based on newly discovered evidence. See, e.g., Fla. R. App. P. 3.851(e)(2)(C); Fla. R. App. P. 3.851(d)(2); Jones v. State, 709 So. 2d 512 (Fla. 1998). In this case, however, Peterka is not relying on newly discovered evidence, but seeks to raise a variant on a claim that he has already raised in prior proceedings by relying upon evidence that has been known since his trial. See, e.g., Peterka, 890 So. 2d at 229; Peterka v. McDonough, 2007 WL 1030078 (N.D. Fla. 2007). This attempt is successive and untimely. In addition, Peterka's claim does not involve the same "actual innocence" claim which was addressed in Schlup, but instead is more of a reduced culpability claim.

Accordingly, we affirm the circuit court's order denying the successive motion for postconviction relief.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

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Served:

ROBERT ELMORE
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HON. GEORGE R. BARRON, JUDGE