

# Supreme Court of Florida

TUESDAY, DECEMBER 17, 2013

CASE NO.: SC13-517

Lower Tribunal No(s): 1994-CF-498

LORAN COLE

vs. STATE OF FLORIDA

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Appellant(s)

Appellee(s)

Loran Cole, a prisoner under a sentence of death, appeals the summary denial of his successive motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.851. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. This Court affirmed Cole’s conviction and sentence of death on direct appeal in Cole v. State (Cole I), 701 So. 2d 845 (Fla. 1997). The denial of postconviction relief was affirmed and his petition for a writ of habeas corpus was denied in Cole v. State (Cole II), 841 So. 2d 409 (Fla. 2003). The denial of Cole’s motion for postconviction DNA testing was affirmed in Cole v. State (Cole III), 895 So. 2d 398, 401 (Fla. 2004). The denial of Cole’s first successive motion for postconviction relief, alleging previously suppressed memories about abuse he witnessed and suffered at the Dozier School for Boys, was affirmed in Cole v. State (Cole IV), 83 So. 3d 706 (Fla. 2012) (unpublished order) (finding that “the allegations in Cole’s claim are refuted by the record. . .”).

On November 19, 2012, Cole filed a second successive postconviction motion, reframing his memory suppression issue as one of newly discovered evidence. The postconviction court summarily denied the claim, finding it to be time-barred because it could have been raised in a previous motion.

Because we find that Cole's claim here is nearly undistinguishable from his claim in Cole IV, we find that his claim is procedurally barred and was properly denied by the postconviction court. See Pardo v. State, 108 So. 3d 558, 567 (Fla. 2012) (finding that Pardo's claim of incompetence to stand trial was procedurally barred because it had been raised on direct appeal and in his initial postconviction motion); Johnston v. State, 27 So. 3d 11, 28 (Fla. 2010) (finding that Johnston's shackling claim was procedurally barred because he raised it on direct appeal). Accordingly, the trial court's denial of postconviction relief is hereby affirmed.

It is so ordered.

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

A True Copy

Test:

  
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John A. Tomasino  
Clerk, Supreme Court



mh  
Served:

RICHARD EDWARD KILEY  
JAMES VINCENT VIGGIANO, JR.  
HON. DAVID R. ELLSPERMANN, CLERK  
KENNETH SLOAN NUNNELLEY  
HON. HALE RALPH STANCIL, JUDGE

HON. BRADLEY E. KING  
ALI ANDREW SHAKOOR