

Supreme Court of Florida

CORRECTED OPINION

No. 69,481

WILLIE JASPER DARDEN, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[October 16, 1986]

PER CURIAM.

Willie Jasper Darden, a state prisoner under sentence of death for whom a fifth death warrant has been signed, appeals the trial court's denial of his Florida Rule of Criminal Procedure 3.850 motion for post conviction relief.* We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. We affirm the trial court's order denying relief and deny the requested stay of execution.

Darden raises two claims in this petition. The first claim alleges that his trial counsel was ineffective for failing to competently investigate Darden's alibi, his defense at trial. Darden raised the issue of his trial counsel's ineffectiveness in his first 3.850 motion, Darden v. State, 372 So.2d 437 (Fla. 1979). We affirm the trial court's denial of relief because Darden is procedurally barred from raising this issue again in a successive petition. See Stewart v. State, No. 69,387 (Fla. Oct. 1, 1986).

* This is Darden's third 3.850 motion. See Darden v. State, 475 So.2d 217 (Fla. 1985); Darden v. State, 372 So.2d 437 (Fla. 1979).

The second issue raised alleges that the death penalty is imposed in Florida in a racially discriminatory manner. This claim could have been raised in Darden's previous 3.850 motions and, therefore, he is procedurally barred from raising it now. Further, even were we to reach the merits, we have repeatedly rejected this contention. See, e.g., Stewart; Smith v. State, 457 So.2d 1380 (Fla. 1984); State v. Henry, 456 So.2d 466 (Fla. 1984).

Accordingly, the order appealed from is affirmed and the request for a stay of execution is denied. The motion for stay of execution and/or stay pending filing and disposition of petition for writ of certiorari is denied also.

It is so ordered.

McDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH and SHAW, JJ.,
Concur
BARKETT, J., Concurs in result only

NO MOTION FOR REHEARING WILL BE ENTERTAINED BY THE COURT.

An Appeal from the Circuit Court in and for Polk County,

John H. Dewell, Judge - Case No. CF73-2027

Robert Augustus Harper, Jr., Tallahassee, Florida; and
Larry Helm Spalding, Capital Collateral Representative, Mark E.
Olive, Litigation Coordinator, and James C. Lohman of the Office
of Capital Collateral Representative, Tallahassee, Florida,

for Appellant

Jim Smith, Attorney General and Richard W. Prospect, Assistant
Attorney General, Daytona Beach, Florida,

for Appellee