

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed December 24, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-2466
Lower Tribunal No. 03-31676

Anthony Manchild McDonald,
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, Reemberto Diaz, Judge.

Anthony Manchild McDonald, in proper person.

Bill McCollum, Attorney General, and Jill D. Kramer, Assistant Attorney General, for appellee.

Before COPE, RAMIREZ, and SUAREZ, JJ.

SUAREZ, J.

This is an appeal from an order denying a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. The appellant in point four of his motion claimed that the prosecution deliberately used false evidence in violation of Giglio v. State, 405 U.S. 150 (1972). In point five, the appellant claimed that the prosecution deliberately destroyed exculpatory evidence in bad faith, in violation of Arizona v. Youngblood, 488 U.S. 51 (1988). The trial court declined to reach to merits of both claims, stating that such claims are not cognizable under Rule 3.850.

We disagree with the trial court. Such claims are cognizable under Rule 3.850. See Rivera v. State, 33 Fla. L. Weekly S386, 386088 (Fla. June 12, 2008); Swain v. State, 937 So. 2d 1160, 1160-61 (Fla. 3d DCA 2006). Accordingly, we reverse the order on those two claims and remand for further consideration by the trial court. We affirm the denial of postconviction relief on grounds one, two, and three.

Affirmed in part, reversed and remanded in part.