

Third District Court of Appeal
State of Florida, January Term, A.D. 2010

Opinion filed July 7, 2010.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-1370
Lower Tribunal No. 99-15105

Michael Perez,
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, David C. Miller, Judge.

Michael Perez, in proper person.

Bill McCollum, Attorney General, for appellee.

Before GERSTEN, SHEPHERD, and LAGOA, JJ.

SHEPHERD, J.

The appellant appeals from the trial court's order striking his motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850 as facially insufficient. The order, taken verbatim from the State's response, strikes the appellant's motion without prejudice for failure to meet the requirements of Florida Rule of Criminal Procedure 3.851(e)(2)(C). The appellant in this case pled guilty to second-degree murder with a firearm, and was sentenced to forty years imprisonment. Rule 3.851, as appropriately titled, "appl[ies] to all motions and petitions for any type of post-conviction or collateral relief brought by a prisoner in state custody who has been **sentenced to death** and whose conviction and death sentence have been affirmed on direct appeal." (emphasis added). As the appellant rightfully argues, he was not sentenced to death, and thus, his post-conviction motion filed under Rule 3.850 was proper. The trial court's order is reversed and this case is remanded for the trial court to determine the merits of the appellant's motion under Rule 3.850.