

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

DERRICK CLEMMONS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-3988

[July 5, 2007]

PER CURIAM.

The trial court summarily denied appellant's motion for postconviction relief without providing its rationale or attaching those parts of the record which conclusively refute the claims made. *See Anderson v. State*, 627 So. 2d 1170 (Fla. 1993). However, appellant's motion did not comply with the rule requirement that the motion be under oath. *See Fla. R. Crim. P. 3.850(c)*. While the motion itself was sworn, the facts were included in a memorandum which was not sworn. Therefore, we affirm the summary denial of the motion. *Daniels v. State*, 450 So. 2d 601 (Fla. 4th DCA 1984). However, our affirmance is without prejudice to filing a properly sworn motion and memorandum within sixty days of this opinion.

SHAHOOD, C.J., WARNER and STEVENSON, JJ., CONCUR.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Edward A. Garrison, Judge; L.T. Case No. 02-6550 CFA02.

Derrick Clemmons, South Bay, pro se.

Bill McCollum, Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.