

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2004

WILLIE J. KENT,

Appellant,

v.

Case No. 5D04-2238

STATE OF FLORIDA,

Appellee.

Opinion filed October 8, 2004

3.853 Appeal from the Circuit Court
for Brevard County,
Charles M. Holcomb, Judge.

Willie J. Kent, Raiford, *pro se*.

Charles J. Crist, Jr., Attorney General, Tallahassee,
and Wesley Heidt, Assistant Attorney General,
Daytona Beach, for Appellee.

PALMER, J.

Willie J. Kent (defendant) appeals the final order entered by the trial court denying his rule 3.853¹ motion for DNA testing. The trial court denied the motion as untimely because it was not filed within two years of the date the defendant's judgment and sentence became final. While the State commendably concedes that this ruling was improper because the Florida Supreme Court suspended the deadline for filing a rule 3.853 motion in Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A), 857 So.2d 190 (Fla. 2003), the State argues that the court's order should be affirmed because the defendant's motion fails to meet the initial threshold pleading requirements for DNA testing. We conclude that such a determination

¹See Fla. R. Crim. P. 3.853 (authorizing post-conviction DNA testing).

is properly made by the trial court. Accordingly, we reverse the trial court's order and remand this matter for further proceedings.

REVERSED and REMANDED.

SAWAYA, C.J., and THOMPSON, J., concur.