

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

JULY TERM 2006

ISAIAH STARR,

Appellant,

v.

Case No. 5D06-3064

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 1, 2006

3.853 Appeal from the Circuit Court
for Orange County,
John M. Kest, Judge.

Isaiah Starr, South Bay, *pro se*.

No Appearance for Appellee.

EVANDER, J.

We affirm the trial court's denial of appellant's motion for DNA testing filed pursuant to Florida Rule of Criminal Procedure 3.853.

On August 10, 2000, appellant pled nolo contendere to one count of kidnapping a child under thirteen years of age and one count of sexual battery with a deadly weapon or physical force. He was sentenced to twenty years in the Department of Corrections, followed by ten years of probation on each count. The sentences were concurrent. Appellant's conviction was affirmed by this court. *Starr v. State*, 793 So. 2d 972 (Fla. 5th DCA 2001).

Appellant subsequently filed a motion seeking DNA testing of a condom. The condom had been found in the vicinity of the area where the victim had been assaulted.

Section 925.11(1)(a)2., Florida Statutes (2006), permits a person who has entered a plea of guilty or nolo contendere to a felony prior to July 1, 2006, to petition a court to "order the examination of physical evidence collected at the time of the investigation of the crime for which he or she has been sentenced that may contain DNA (deoxyribonucleic acid) and that *would exonerate that person.*" (emphasis added) Here, the record supports the trial court's conclusion that DNA testing of the condom would not, regardless of the results, exonerate appellant. The sexual assault occurred in an outdoor area near a public park and there was no suggestion in the record that the victim's assailant had used a condom.

AFFIRMED.

PLEUS, C.J. and LAWSON, J., concur.