

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2014*

**KEVIN R. MILLER,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D14-2139

[October 1, 2014]

Appeal of order denying rule 3.853 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Glenn D. Kelley, Judge; L.T. Case No. 502005CF015634B.

Kevin R. Miller, Wewahithcka, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cynthia L. Comras, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We reverse the trial court's order summarily denying appellant's facially sufficient rule 3.853 motion for DNA testing. As the State concedes in its response to this court, the trial court's order erroneously construed the motion as untimely filed under rule 3.850. This matter is remanded for the trial court to consider the merits of appellant's rule 3.853 motion.

*Reversed and remanded.*

DAMOORGIAN, C.J., GROSS and CIKLIN, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***