

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOEL THEODORE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D17-2180

[April 25, 2018]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael I. Rothschild, Judge; L.T. Case No. 13-14736 CF10A.

Joel Theodore, Perry, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and James J. Carney, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Joel Theodore appeals an order summarily denying his Florida Rule of Criminal Procedure 3.850 motion.

After receiving a notice from the state that DNA evidence in his case may have relied on improper statistical calculations, Theodore moved to withdraw his plea. He alleged in part that he would not have entered the plea and would have proceeded to trial if he had known that the DNA evidence was inaccurate.

The trial court denied the motion, concluding that Theodore failed to show prejudice and his claim was conclusively refuted by a DNA inquiry form signed by Theodore and the attorneys at the time of the plea. On the form, the defense attorney and the prosecutor confirmed that they were unaware of any physical evidence for which DNA testing could exonerate Theodore. This statement does not mean that there was no DNA evidence in his case. The form does not refute his claim that the

state's DNA evidence was inaccurate and that the faulty DNA statistical calculations induced his plea.

Despite some equivocal language, Theodore's rule 3.850 motion states a facially sufficient claim that is not conclusively refuted by the attached DNA inquiry form. Accordingly, we reverse the summary denial of the motion and remand for further proceedings.

Reversed and remanded.

DAMOORGIAN, CIKLIN and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.