

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

JORGE CASTRO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-1095

[December 23, 2009]

PER CURIAM.

Jorge Castro appeals the summary denial of his motion for postconviction relief, which alleged four grounds. Castro's first point is not refuted by the record and should be considered at an evidentiary hearing. At issue is Castro's claim that counsel failed to use, at trial, telephone records which he claims reflect that he was on a telephone call at the exact time he was allegedly pointing a rifle at the police. The other grounds alleged in the motion for postconviction relief were properly denied as legally inadequate or conclusively refuted by the record.

Affirmed in part, reversed in part, and remanded.

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

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John J. Murphy, III, Judge; L.T. Case No. 06-2918CF10A.

Jorge Castro, Miami, pro se.

Bill McCollum, Attorney General, Tallahassee, and Diane F. Medley, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.