

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

CURTIS SLADE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-277

[June 17, 2009]

PER CURIAM.

Appellant Curtis Slade appeals a trial court order which summarily denied his motion for postconviction relief alleging newly discovered evidence. The motion was based on an affidavit from a cellmate of appellant who witnessed the incident on which Slade's convictions were based. Appellant alleged that this cellmate's account of events would sufficiently impeach the State's key witness and victim such that it would probably produce an acquittal on retrial. *See Jones v. State*, 591 So. 2d 911 (Fla. 1991).

We reject the trial court's denial of this motion as successive and untimely, because the claim of newly discovered evidence, if legally sufficient, would overcome those obstacles. However, the motion as pleaded did not show whether Slade or defense counsel could not have known of the eyewitness's account of the events at the time of trial by use of diligence. In accordance with *Spera v. State*, 971 So. 2d 754 (Fla. 2007), we reverse the trial court's summary denial of relief and remand for it to grant appellant leave to amend his motion to comport with the pleading requirements for a claim of newly discovered evidence.

Reversed and Remanded for Further Proceedings.

WARNER, POLEN and DAMOORGIAN, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for

the Seventeenth Judicial Circuit, Broward County; Marc H. Gold, Judge;
L.T. Case No. 02-17549 CF10A.

Curtis Slade, Arcadia, pro se.

Bill McCollum, Attorney General, Tallahassee, and Jeanine M.
Germanowicz, Assistant Attorney General, West Palm Beach, for
appellee.

Not final until disposition of timely filed motion for rehearing.