

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

WILBERT E. HOLLINS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D11-3401

[September 5, 2012]

PER CURIAM.

Wilbert E. Hollins (Defendant) appeals an order summarily denying his rule 3.850 motion, claiming newly discovered evidence in the form of a proposed witness who was willing to testify that the victim told him that she had lied at his trial and Defendant did not commit the offenses for which he was convicted, but that another individual actually shot her. We affirm, but not for the same reasons provided by the trial court.

While the trial court suggested that the motion might be untimely, it did not actually make a finding of untimeliness. However, the record indicated that in a prior rule 3.850 motion under oath, filed in a different lower tribunal case involving the same victim, which Defendant filed in July 2008, he stated he had learned of the information “**a few months ago as of this writing.**” Construing “a few” to mean three or more, but more than two, Defendant had to have learned of the information not later than some time in April 2008. The instant motion, turned over to prison authorities for mailing in May 2010, therefore was untimely. Fla. R. Crim. P. 3.850(b)(1). We affirm for that reason.

Affirmed.

MAY, C.J., STEVENSON and DAMOORGIAN, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jeffrey J. Colbath,

Judge; L.T. Case No. 1990CF005212AXX.

Wilbert E. Hollins, Wewahitchka, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.