

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JEREMY BILLY VARGAS,)
)
Appellant,)
)
v.) Case No. 2D04-194
)
STATE OF FLORIDA,)
)
Appellee.)
)

Opinion filed June 9, 2004.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Pasco County; Wayne L. Cobb, Judge.

PER CURIAM.

Jeremy Billy Vargas challenges the order of the trial court denying as facially insufficient his motion for DNA testing filed pursuant to Florida Rule of Criminal Procedure 3.853. We affirm without prejudice to any right Vargas might have to file a timely, facially sufficient 3.853 motion in accordance with the time limitations outlined in that rule, or within sixty days from the date of the issuance of the mandate in this case should this be the later date. See Saffold v. State, 850 So. 2d 574 (Fla. 2d DCA 2003)

(holding that a rule 3.853 motion that does not contain at least some information as to the primary evidence against the movant and any defense employed at trial, does not provide a facially sufficient statement to meet the requirements of subsections (b)(3) and (b)(4) of the rule).

Affirmed.

CASANUEVA, SALCINES, and SILBERMAN, JJ., Concur