

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

ROBERT PATRICK SHARKEY, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 )  
 \_\_\_\_\_ )

Case No. 2D06-967

Opinion filed July 26, 2006.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Lee County; Thomas S. Reese, Judge.

CANADY, Judge.

Robert Patrick Sharkey appeals the summary denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a) or, in the alternative, pursuant to Florida Rule of Criminal Procedure 3.850. In his motion, Sharkey raised three claims for relief. The postconviction court concluded that Sharkey failed to raise any claims cognizable under rule 3.800(a) and also denied relief pursuant to rule 3.850. We affirm the postconviction court's summary denial under rule 3.800(a). We affirm the postconviction court's summary denial pursuant to rule 3.850 as it relates

to claims one and three because they are without merit, but we reverse as to claim two. Because Sharkey's motion was properly sworn pursuant to Armey v. State, 880 So. 2d 1269 (Fla. 2d DCA 2004), and claim two is not refuted by any portion of the record, we reverse the order denying the motion and remand to the postconviction court for further consideration of claim two pursuant to rule 3.850.

Affirmed in part, reversed in part.

CASANUEVA and WALLACE, JJ., Concur.