

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

GENE SZEREMI,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D08-4332

Opinion filed April 17, 2009.

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

KHOUZAM, Judge.

We affirm, without comment, that portion of the postconviction court's order denying Gene Szeremi's motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850 and alternative petition for writ of habeas corpus.

In the same order, the postconviction court also denied as untimely Mr. Szeremi's motion for postconviction DNA testing filed under Florida Rule of Criminal Procedure 3.853. However, as a result of amendments to rule 3.853 and statutes governing DNA testing, a motion for postconviction DNA testing may be filed at any time

following the date that the judgment and sentence in the case become final. See In re Amendments to Fla. R. Crim. P. 3.170 & 3.172, 953 So. 2d 513, 518 (Fla. 2007); In re Amendments to Fla. R. Crim. P. 3.853(d), 938 So. 2d 977, 978 (Fla. 2006); Bain v. State, 963 So. 2d 913, 914 (Fla. 2d DCA 2007). Accordingly, we reverse the denial of Mr. Szeremi's motion for postconviction DNA testing and remand for further proceedings under rule 3.853(c). We express no opinion regarding the allegations of Mr. Szeremi's motion.

Affirmed in part; reversed in part; remanded.

DAVIS and KELLY, JJ., Concur.