

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

CHRISTOPHER K. BURTON, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 )  
 \_\_\_\_\_ )

Case No. 2D08-5279

Opinion filed December 30, 2009.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Hillsborough County; Anthony K. Black,  
Judge.

Christopher K. Burton, pro se.

SILBERMAN, Judge.

Christopher K. Burton seeks review of the order dismissing his motion for postconviction relief which was filed pursuant to Florida Rule of Criminal Procedure 3.850. Burton's motion alleged newly discovered evidence in the form of witness recantation testimony. Because the postconviction court erroneously determined that such a claim must be accompanied by a sworn witness affidavit, we reverse and

remand for reconsideration of the claim on the merits. See Butler v. State, 946 So. 2d 30, 31 (Fla. 2d DCA 2006); Keen v. State, 855 So. 2d 117, 118 (Fla. 2d DCA 2003); Smith v. State, 837 So. 2d 1185, 1186 (Fla. 4th DCA 2003). But see Brooks v. State, 972 So. 2d 958, 958 (Fla. 5th DCA 2007) (affirming summary denial of rule 3.850 motion based on failure to include sworn statement of witness who had allegedly recanted); Moss v. State, 943 So. 2d 946, 948 (Fla. 4th DCA 2006) (holding that unsworn letter attached to rule 3.850 motion alleging newly discovered evidence was not sufficient to warrant evidentiary hearing).

Reversed and remanded.

FULMER and DAVIS, JJ., Concur.