

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ROBERT F. GRIFFITH,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D03-1732

Opinion filed December 12, 2003.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Sarasota County;
Harry M. Rapkin, Judge.

SALCINES, Judge.

Robert F. Griffith appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. In his motion, Griffith alleged a claim of newly discovered evidence, but he failed to allege that he could not have discovered the evidence through the exercise of due diligence or that withdrawal of his plea is necessary to prevent a manifest injustice. See Daniel v. State, 740 So. 2d 1179 (Fla. 2d DCA 1999); Alkanan v. State, 786 So. 2d 1275 (Fla. 4th DCA

2001). Therefore, we affirm the trial court's order of denial without prejudice to Griffith to file a legally sufficient motion based on newly discovered evidence within thirty days of the issuance of the mandate in this appeal. See Alkanan, 786 So. 2d at 1276.

Affirmed.

FULMER and WALLACE, JJ., Concur.