

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

PHILIP McCLINTON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D04-2779

Opinion filed December 10, 2004.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Polk County; Roger Allan Alcott,
Judge.

PER CURIAM.

Philip McClinton challenges the trial court's order denying his motion for postconviction DNA testing pursuant to Florida Rule of Criminal Procedure 3.853. We affirm the trial court's denial of the motion on the ground that it is facially insufficient. Our affirmance is without prejudice to any right McClinton might have to file a facially

sufficient rule 3.853 motion within sixty days from the date of the issuance of the mandate in this case. See Saffold v. State, 850 So. 2d 574 (Fla. 2d DCA 2003).

SILBERMAN, CANADY, and VILLANTI, JJ., Concur.