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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HEIDI NICOLE MARINO,)	
Appellant,)	
V.) Case No. 2D13-1614	
STATE OF FLORIDA,)	
Appellee.)	
)	

Opinion filed February 5, 2014.

Appeal from the Circuit Court for Hillsborough County; Debra K. Behnke, Judge.

Heidi Nicole Marino, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Donna S. Koch, Assistant Attorney General, Tampa, for Appellee.

VILLANTI, Judge.

The order denying Heidi Nicole Marino's motion filed pursuant to Florida
Rule of Criminal Procedure 3.850 is affirmed without prejudice to any right Marino may
have to file a rule 3.850 motion seeking to vacate the sentence based on newly
discovered evidence, the basis of such a claim being the affidavit of the victim averring

that she suffered no injuries in the attack.¹ See Marek v. State, 14 So. 3d 985, 990 (Fla. 2009) (holding that in order to vacate a sentence based on newly discovered evidence, a defendant must demonstrate that said evidence would probably yield a less severe sentence). Any such motion shall be filed within sixty days from the issuance of the mandate in this proceeding and shall not be considered successive.

Affirmed.

NORTHCUTT and WALLACE, JJ., Concur.

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¹See Stallworth v. State, 21 So. 3d 84, 86 (Fla. 1st DCA 2009) (holding that "[r]ecantation evidence is considered to be a type of newly discovered evidence").