

Third District Court of Appeal

State of Florida

Opinion filed June 3, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1067
Lower Tribunal No. 98-1058

Geodis Gonzalez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Alan S. Fine,
Judge.

Geodis Gonzalez, in proper person.

Ashley Moody, Attorney General, and Kayla Heather McNab, Assistant
Attorney General, for appellee.

Before EMAS, C.J., and SCALES and HENDON, JJ.

HENDON, J.

Geodis Gonzalez appeals from a final order denying his petition for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm.

In 1998, Gonzalez was found guilty as charged of one count of first-degree murder and one count of armed robbery. He was sentenced to life in prison. In 2015, relying on the exception to the two-year time limit based on newly discovered evidence, Gonzalez filed a 3.850 petition alleging newly discovered evidence. See Fla. R. Crim. P. 3.850(b)(1). In his petition, he claimed his sister told him that, sometime in 2003, she learned from her then-husband, Todd Sienkiewicz, that it was actually he who had committed the murder for which Gonzalez was imprisoned. The State obtained Sienkiewicz's statement denying the allegations. The trial court dismissed Gonzalez's Rule 3 petition because there was no sworn affidavit attesting to the allegations. Gonzalez subsequently filed an amended 3.850 petition attaching his sister's sworn affidavit.

At the hearing on the admissibility of the affidavit, the State called Sienkiewicz to the stand. When asked about the allegations in his ex-wife's affidavit, he invoked the marital privilege. § 90.504, Fla. Stat. (2018).¹ At that point, the trial

¹ A spouse has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, communications which were intended to be made in confidence between the spouses while they were husband and wife. § 90.504, Fla. Stat. (2018).

court concluded that it could not admit the affidavit into evidence because no exceptions to the marital privilege applied to the circumstances. The trial court denied Gonzalez's postconviction petition.

Section 90.504(3) sets out the three situations where the marital privilege does not exist:

(a) In a proceeding brought by or on behalf of one spouse against the other spouse.

(b) In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either.

(c) In a criminal proceeding in which the communication is offered in evidence by a defendant-spouse who is one of the spouses between whom the communication was made.

See also § 504.5 Marital privilege - Exceptions, 1 Fla. Prac., Evidence § 504.5 (2019 ed.). None of the aforementioned exceptions apply to these facts.

Although there is some suggestion by Gonzalez that the relevant conversations between his sister and Sienkiewicz may have been overheard by other parties, there is nothing in the record to substantiate that claim. See, e.g., Yokie v. State, 773 So. 2d 115, 117 (Fla. 4th DCA 2000) (holding that when a third party overhears communications between husband and wife, the communication is protected only if the spouse intended it to be private). Because no exception to the marital privilege exists in the record on appeal, we affirm the trial court's denial of relief.

Affirmed.