

Third District Court of Appeal

State of Florida, July Term, A.D., 2008

Opinion filed November 5, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-53

Lower Tribunal No. 79-11279

Tom Gomez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jorge Perez, Judge.

Bennett H. Brummer, Public Defender, and Marti Rothenberg, Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Jill D. Kramer, Assistant Attorney General, for appellee.

Before COPE and LAGOA, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

Affirmed.

COPE, J. (concurring).

This is a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850, alleging newly discovered evidence. The defendant has offered the affidavits of Michael Rowe and Joseph La Rocca, contending that the proffered testimony exonerates him.

I concur in the denial of relief because in the motion and brief, the defendant acknowledges that Detective Martin testified at trial that the defendant had verbally confessed to his involvement in the murder. The defendant's only comment about this confession is that it was never reduced to writing and signed by the defendant. The fact that there is no signed writing does not mean that the confession is inadmissible or must be disregarded. That being so, I join in the affirmance.*

* The State has argued that one of the affidavits, that of Thomas Rowe, does not qualify as newly discovered evidence. However, assuming that the affiant is willing now to testify (the affidavit does not say so), the affidavit may qualify as newly discovered evidence "based on newly available testimony of defendants who were previously unwilling to testify." Totta v. State, 740 So. 2d 57, 58 (Fla. 4th DCA 1999); see also Brantley v. State, 912 So. 2d 342, 343 (Fla. 3d DCA 2005).