

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002

ALFREDO M. THEOC,

**

Appellant,

**

vs.

**

CASE NO. 3D02-3030

THE STATE OF FLORIDA,

**

LOWER

TRIBUNAL NO. 98-42269

Appellee.

**

Opinion filed December 11, 2002.

An appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Dade County, Daryl E. Trawick, Judge.

Alfredo M. Theoc, in proper person.

Richard E. Doran, Attorney General, for appellee.

Before SCHWARTZ, C.J., and COPE and GODERICH, JJ.

COPE, J.

Alfredo M. Theoc appeals an order denying his motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. The court ruled that defendant-appellant Theoc had

failed to swear to the motion. As the court erred on this point, we reverse.

At the end of the Rule 3.850 motion, the defendant executed the "Unnotarized Oath" set forth in Florida Rule of Criminal Procedure 3.987, stating, "Under penalties of perjury, I declare that I have read the foregoing Motion for Post Conviction Relief and that the facts stated in it are true."

The State filed a response arguing that the motion should be denied because it failed to comply with the oath requirement of Rule 3.850. The trial court accepted this argument and denied the motion without prejudice.

The State overlooked the fact that section 92.525, Florida Statutes (2001), allows an unnotarized oath, in the form used by the defendant in this case. The Florida Supreme Court has specifically authorized this procedure, State v. Shearer, 628 So. 2d 1102 (Fla. 1993), and the standard form of Rule 3.850 motion now gives an inmate the option of executing a notarized oath, or an unnotarized oath. Fla. R. Crim. P. 3.987. Under either alternative, the motion is sworn under penalties of perjury. Shearer, 628 So. 2d at 1103.

The State's reliance on Anderson v. State, 627 So. 2d 1170 (Fla. 1993), was misplaced. That case involved a Rule 3.850 motion which contained no oath at all. In the present case, the

defendant properly complied with the oath requirement.

Since the motion was properly sworn to, we reverse the order now under review and remand the cause to the trial court for further consideration. We express no opinion on the merits of the defendant's motion.

Reversed and remanded for further proceedings consistent herewith.