

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2004

RUPERT DESOUZA,

**

Appellant,

**

CASE NO.:3D04-157

vs.

**

LOWER

TRIBUNAL NO.:01-5634

THE STATE OF FLORIDA,

**

Appellee.

**

Opinion filed June 9, 2004.

An appeal under Fla. R. App. P. 9.141(b)(2) from the
Circuit Court for Miami-Dade County, Lawrence Schwartz, Judge.

Rupert Desouza, in proper person.

Charles J. Crist, Attorney General, for appellee.

Before SCHWARTZ, C.J., and GERSTEN and WELLS, JJ.

PER CURIAM.

The defendant appeals an order denying his motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. We affirm, finding that the trial court properly ruled that the defendant had failed to sign and swear the motion. See

Fla. R. Crim. P. 3.850(c) (stating that a motion for post-conviction relief "shall be under oath . . ."); see also Fla. R. Crim. P. 3.987 (providing *pro se* defendants with a model form to use when filing a post-conviction motion which satisfies the rule 3.850(c) oath requirement). Nevertheless, we conclude that the defendant should be afforded an opportunity to refile a properly sworn post-conviction motion. See Groover v. State, 703 So. 2d 1035, 1038 (Fla. 1997) (finding that the "[f]ailure to meet the oath requirement [under rule 3.850(c)] warrants dismissal of the motion without prejudice"); Weisman v. State, 651 So. 2d 148, 149 (Fla. 2d DCA 1995) (where the trial court denied the defendant's belated appeal pursuant to rule 3.850 because it was not made under oath, finding that "the trial court should have afforded [the defendant] an opportunity to refile a properly sworn motion for belated appeal").

Affirmed.