

Third District Court of Appeal

State of Florida, July Term, A.D. 2012

Opinion filed October 31, 2012.

Not final until disposition of timely filed motion for rehearing.

No. 3D12-1725

Lower Tribunal Nos. 07-34151, 07-17803, 07-17801

Frank Salabarría,
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, Monica Gordo, Judge.

Frank Salabarría, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before WELLS, C.J., and SHEPHERD and LAGOA, JJ.

WELLS, Chief Judge.

Frank Salabarría appeals from a July 21, 2011, order denying his Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief and from a May 18, 2012, order denying rehearing thereon. We reverse the order on review because the record before us does not conclusively show that Salabarría is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(A) and (D). More particularly, the only order that has been provided to this court is the order purportedly denying Salabarría's motion for rehearing issued in May of this year. That order is titled "ORDER DENYING DEFENDANT'S *PRO SE* MOTION FOR POST CONVICTION RELIEF," and suggests that it is not only an order denying Salabarría's motion for rehearing but also an order denying at least one of two pending Rule 3.850 motions as well:

THIS CAUSE having come before this Court on the defendant, Frank Salabarría's, *pro se* motion for post conviction relief and this Court having reviewed the motion, the State's response thereto, the court files and the records in this case, and being otherwise fully advised in the premises therein, hereby denies the defendant's Motion on the following grounds:

The defendant presently asks for rehearing and/or moves this court to reconsider its ruling in the matter denied on 7/21/11. The present motion should be denied because his arguments are successive, have no legal basis to be reheard, and the arguments previously made on this point are of the kind that should and could have been raised on appeal.

Compounding the confusion inherent in this order, is the fact that no copy of any motions or orders that would support the trial court's conclusion that Salabarría's arguments are successive have been provided to this court. In sum, on

the record before us we cannot discern what motion or motions have been adjudicated by the sole order provided to us, much less that the motion or motions being adjudicated are either successive or are the proper subject of an appeal rather than a post-conviction motion.

Because the record now before us fails to make the required showing that Salabarría is entitled to no relief, we reverse and remand for attachment of those portions of the record which conclusively show that Salabarría is entitled to no relief or alternatively for an evidentiary hearing on his motions.

Reversed and remanded for further proceedings.