

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ANGEL ROSARIO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-1669

[September 19, 2024]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Daliah H. Weiss, Judge; L.T. Case No. 502021CF003419.

Angel Rosario, South Bay, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

MAY, DAMOORGIAN and GERBER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

November 22, 2024

ANGEL ROSARIO,
Appellant(s)
v.

CASE NO. - 4D2024-1669
L.T. No. - 502021CF003419

STATE OF FLORIDA,
Appellee(s).

BY ORDER OF THE COURT:

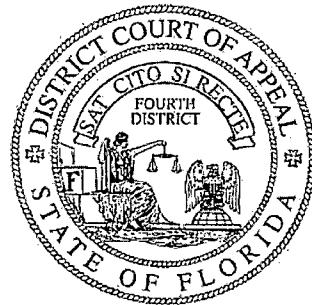
ORDERED that Appellant's October 11, 2024 motion for rehearing, rehearing en banc, clarification, and written opinion is denied.

Served:
Crim App WPB Attorney General
Angel Rosario

KR

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2024-1669 November 22, 2024



M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

This cause having been brought to the Court by appeal or by petition, and after due consideration the Court having issued its opinion;

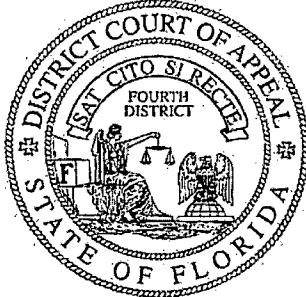
YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the the Honorable Mark W. Klingensmith, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: December 10, 2024
CASE NO.: 4D2024-1669
COUNTY OF ORIGIN: Palm Beach County
T.C. CASE NO.: 502021CF003419
STYLE: ANGEL ROSARIO,
Appellant(s)
v.

STATE OF FLORIDA,
Appellee(s).

Lonn Weissblum
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2024-1669 December 10, 2024



Served:

Crim App WPB Attorney General

Palm Beach Clerk

Angel Rosario

Palm Beach State Attorney

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

FELONY DIVISION: S
CASE NO.: 50-2021-CF-003419-AXXX-MB

STATE OF FLORIDA,

vs.

ANGEL ANTONIO ROSARIO,
Defendant.

/

**ORDER DISMISSING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
SEEKING POSTSENTENCING DNA TESTING AND GRANTING LEAVE TO FILE AN
AMENDED MOTION FOR POSTCONVICTION RELIEF WITHIN SIXTY (60) DAYS**

THIS CAUSE came before the Court on the Defendant's "Motion for Postconviction Relief Seeking Postsentencing DNA Testing" ("Motion") (DE #247), filed on October 31, 2023, pursuant to Florida Rule of Criminal Procedure 3.853. Having reviewed Defendant's Motion, the Court finds that Defendant's Motion is facially insufficient because it does not comport with the oath and/or certification requirements of Florida Rule of Criminal Procedure 3.850(c) and 3.850(n). Defendant may satisfy both requirements by utilizing and signing below the following oath and certification set out in Florida Rule of Criminal Procedure 3.987 (effective July 1, 2021):

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, has potential merit and does not duplicate previous motions that have been disposed of by the court.

I certify that [choose one]

I understand English and have read the foregoing motion, or had the motion read to me; or

I cannot understand English and the foregoing motion was translated completely into a language that I understand and was read to me by . . . (name) . . ., whose address is . . . (address) . . ., and whose certification of an accurate and complete translation is attached to this motion.

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ANGEL A ROSARO

DC: G41640

South Bay Correctional Facility

P. O. Box. 7171

South Bay, Florida 33493,

quadrilateral
FIRST-CL
IMI-
\$002
10/20/2023
043M3123

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To the Clerk at Cook
Co Clerk

Main Courthouse
205 N. Dixie Hwy
3rd Floor 324
West Palm Beach
Florida 33401

I understand that I am subject to judicial or administrative sanctions, including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith or with reckless disregard for the truth, or an abuse of the legal process.

The Court notes that Defendant's signature must appear immediately below the oath, which oath should appear at the end of Defendant's Motion. The Court further notes that if Defendant does not speak English and had another person translate and read the Motion to Defendant, Defendant's Motion must be accompanied by a separate certification from that person stating that he or she provided Defendant with an accurate and complete translation. *See Fla. R. Crim. P. 3.850(n)(2).* In addition, the Defendant must certify an understanding of the contents of the motion and that all the facts stated therein are true and correct. *Fla. R. Crim. P. 3.850(c).*

Furthermore, Defendant's Motion is also insufficient under rule 3.853, which provides that a motion for postconviction DNA testing must be under oath and must include the following:

- (1) A statement of the facts relied upon in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained;
- (2) A statement that the evidence was not previously tested for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime;
- (3) A statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime;
- (4) A statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received;
- (5) A statement of any other facts relevant to the motion; and

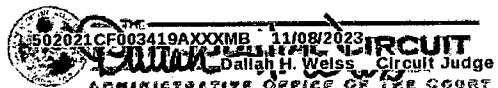
(6) A certificate that a copy of the motion has been served on the prosecuting authority.

In his Motion, Defendant alleges that testing semen alleged to be in the possession of the Palm Beach County Sheriff's Office or the Office of the State Attorney would exonerate him, but fails to allege that the semen was not tested for DNA or that the results were inconclusive, a statement explaining how testing the semen would exonerate him or mitigate his sentence, or that his identity is a "genuinely disputed issue in the case". To the extent Defendant alleges that he would not have entered into a negotiated settlement agreement but for ineffective assistance counsel, such claim is not cognizable in a motion for DNA testing but may be brought in a timely motion for postconviction relief filed pursuant to rule 3.850.

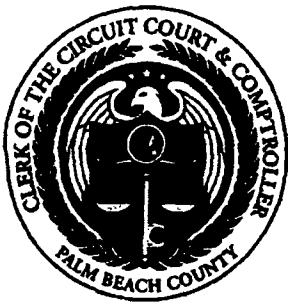
Accordingly, Defendant's Motion is facially insufficient, and it is hereby:

ORDERED that Defendant's "Motion for Postconviction Relief Seeking Postsentencing DNA Testing" is **DISMISSED**. Dismissal of Defendant's Motion is without prejudice, and Defendant is granted leave to file an Amended Motion for Postconviction Relief pursuant to Florida Rule of Criminal Procedure 3.853 within sixty (60) days of the rendition of this Order. This is a non-final, non-appealable order. Defendant has no right to appeal until entry of a final order.

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida.



502021CF003419AXXXMB 11/08/2023
Daliah H. Weiss
Circuit Judge



JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
PALM BEACH COUNTY

Circuit Criminal Division

PO Box 2906

West Palm Beach, FL 33402

P: (561) 355-6222

E: CircuitCriminal_MB@mypalmbeachclerk.com

IN THE CIRCUIT COURT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NUMBER: 50-2021-CF-003419-AXXX-MB

STATE OF FLORIDA

-Vs-

ANGEL ANTONIO ROSARIO

**CERTIFICATE OF CLERK
PURSUANT TO FLORIDA RULES OF COURT 3.850(i)**

I, JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT & COMPTROLLER, PALM BEACH COUNTY, FLORIDA HEREBY CERTIFY THAT A COPY OF THE ORDER DISMISSING MOTION FOR POST CONVICTION RELIEF HAS BEEN MAILED TO THE DEFENDANT AT THE ADDRESS BELOW,

TO WIT:

ANGEL ANTONIO ROSARIO-DC #G41640

South Bay C.I.

600 U.S. Highway 27, South

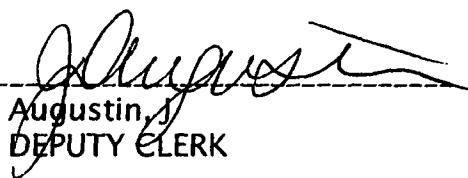
South Bay, Florida 33493-2233

DATE: 9TH OF NOVEMBER, 2023



JOSEPH ABRUZZO,
CLERK OF THE CIRCUIT COURT &
COMPTROLLER

BY:


Augustin J.
DEPUTY CLERK

FILED: PALM BEACH COUNTY, FL JOSEPH ABRUZZO, CLERK. 11/09/2023 12:36:41 PM

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Copies to:

Name	Address	Email
ANGEL ANTONIO ROSARIO	DC #G41640 South Bay C.I. 600 U.S. Highway 27, South South Bay, Florida 33493- 2233	
OFFICE OF THE STATE ATTORNEY	401 N DIXIE HWY WEST PALM BEACH, FL 33401	e-postconviction@sa15.org; feldivs@sa15.org

**Additional material
from this filing is
available in the
Clerk's Office.**