

SUPREME COURT OF FLORIDA

Gore v. State

32 So. 3d 614 (Fla. 2010) · No. SC07-678 · Decided April 8, 2010

SUMMARY

The Supreme Court of Florida affirmed the denial of Marshall Lee Gore's motion for postconviction DNA testing under Florida Rule of Criminal Procedure 3.853. The court held that Gore failed to explain how testing each requested item would create a reasonable probability of acquittal or a lesser sentence, and characterized portions of his request as speculative. The court also rejected requests involving evidence from another murder investigation and proposed DNA samples from witnesses.

CASE DETAILS

|                       |                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                         |
| WRITING FOR THE COURT | Quince, C.J.; Pariente, J.; Lewis, J.; Canady, J.; Polston, J.; Labarga, J.; Perry, J.                                                                           |
| JURISDICTION          | Florida                                                                                                                                                          |
| DECIDED               | April 8, 2010                                                                                                                                                    |
| DOCKET                | SC07-678                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                         |
| PROCEDURAL POSTURE    | Marshall Lee Gore appealed the circuit court's order summarily denying his motion for postconviction DNA testing under Florida Rule of Criminal Procedure 3.853. |
| STANDARD OF REVIEW    | The Supreme Court reviewed the circuit court's denial of the Rule 3.853 motion; the opinion does not state a separate formal standard of review.                 |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of Florida establishing and applying the Rule 3.853 standard for postconviction DNA-testing motions.                      |
| PARTIES               | Marshall Lee Gore v. State of Florida                                                                                                                            |

TOPICS

- state post-conviction relief
- post-conviction relief
- evidence
- sentencing
- appellate procedure

## PRACTICE AREAS

criminal postconviction relief

postconviction DNA testing

capital litigation

criminal procedure

## QUESTIONS PRESENTED

1. Whether Gore's motion sufficiently alleged that DNA testing of specified items collected during the investigation would create a reasonable probability that he would have been acquitted or received a lesser sentence.
2. Whether Gore was entitled to DNA testing of an item collected during a separate murder investigation and to court-ordered DNA samples from witnesses to collaterally attack his conviction.
3. Whether the circuit court properly denied the Rule 3.853 motion as facially insufficient.

## HOLDINGS

1. A movant under Florida Rule of Criminal Procedure 3.853 must explain with specificity how DNA testing of each requested item would create a reasonable probability of acquittal or a lesser sentence, including by demonstrating the nexus between the potential test results and the issues in the case.
2. Gore was not entitled to DNA testing of the listed items because he failed to show that testing could exonerate him or mitigate his sentence, and the possible presence of another person's DNA would not establish a reasonable probability of acquittal or a lesser sentence under the circumstances.
3. Gore was not entitled to testing of the item from the Novick investigation or to court-ordered DNA samples from Restrepo and Corolis because he could not demonstrate how the requested testing would exonerate him in the Roark murder case or mitigate his sentence in that case.

## KEY QUOTATIONS

*“The clear requirement of the provisions of section 3.853 is that a movant, in pleading the requirements of rule 3.853, must lay out with specificity how the DNA testing of each item requested to be tested would give rise to a reasonable probability of acquittal or a lesser sentence.”* (at 617)

*“It is the defendant's burden to explain, with reference to specific facts about the crime and the items requested to be tested, how the DNA testing will exonerate the defendant of the crime or will mitigate the defendant's sentence.”* (at 618)

*“This is exactly the sort of speculation and fishing expedition for which rule 3.853 was not intended.”* (at 620)

## FACTUAL BACKGROUND

Susan Roark was last seen alive with Gore in Tennessee on January 30, 1988. Gore was later seen in Florida driving Roark's vehicle, possessing and pawning her jewelry, and leaving fingerprints in the vehicle; Roark's remains were found in Columbia County. Trial evidence also included Gore's admission to a witness that a purse belonged to a girl he had killed and collateral-crime testimony concerning a similar assault. Gore sought DNA testing of items found near the body, in Roark's vehicle, and in connection with another murder investigation, but did not explain how favorable test results would create a reasonable probability of acquittal or a lesser sentence.

## PROCEDURAL HISTORY

Gore was convicted of first-degree murder, kidnapping, and robbery and sentenced to death. The Supreme Court of Florida affirmed his convictions and sentence on direct appeal and later affirmed the denial of postconviction relief and a state habeas petition. Gore subsequently filed a Rule 3.853 motion seeking DNA testing of numerous items from the murder investigation, an item from a separate murder investigation, and DNA samples from two witnesses. The circuit court denied the motion as facially insufficient, and the Supreme Court of Florida affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Gore v. State, 599 So. 2d 978, 980, 983-84, 986 (Fla. 1992)
- Gore v. State, 846 So. 2d 461, 464-65 (Fla. 2003)
- Hitchcock v. State, 866 So. 2d 23, 27 (Fla. 2004)
- Lott v. State, 931 So. 2d 807, 820-21 (Fla. 2006)
- Robinson v. State, 865 So. 2d 1259, 1265 (Fla. 2004)
- Van Poyck v. State, 908 So. 2d 326, 329 (Fla. 2005)
- Cole v. State, 895 So. 2d 398, 403 (Fla. 2004)
- Tompkins v. State, 872 So. 2d 230, 243 (Fla. 2003)
- Overton v. State, 976 So. 2d 536, 570 (Fla. 2007)
- Gore v. State, 784 So. 2d 418, 423-24 (Fla. 2001)
- Gore v. State, 24 So. 3d 1 (Fla. 2009)