

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

JESSE TOCA

Appellant,

v.

CRC 06-3 APANO
Appeal No. CRC 06-3 APANO
UCN522006AP00003XXXXCR

STATE OF FLORIDA

Appellee.

Opinion filed July 27, 2006

Appeal from a decision of the
Pinellas County Court
Acting County Judge David Walker

Jesse Toca, Pro Se

FILED
Criminal Justice Center
2006 JUL 31 AM 8:28
KEN BURKE
CLERK OF CIRCUIT COURT

ORDER AND OPINION

THIS MATTER is before the Court on the defendant, Jesse Toca's, appeal from a decision of the Pinellas County Court summarily dismissing his motion for post-conviction relief. After reviewing the record and the defendant's brief, this Court affirms the trial court's decision.

The trial court properly dismissed the defendant's motion for post-conviction relief because it was facially insufficient --- he failed to make the motion under oath as required by Fla.R.Crim.P. 3.850. The defendant's argument that his religious beliefs prevent him from complying with the oath requirement was essentially addressed by the

Second District Court of Appeal in Toca v. State, 866 So.2d 1221 (Fla. 2d DCA 2003).

The court was not persuaded by the defendant's argument.

Similarly, the trial court, while recognizing that the defendant's argument was somewhat different to that raised in Toca, was not persuaded. This Court agrees. The defendant's failure to file the motion for post-conviction relief under oath requires its summary dismissal. The defendant's argument that his religious beliefs exempt him from the oath requirement is not persuasive as a matter of law.

IT IS THEREFORE ORDERED that the order dismissing the defendant's motion for post-conviction relief is affirmed.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida
this ____ day of July, 2006.

Original Order entered on July 27, 2006, by Circuit Judges J. Thomas McGrady, R. Timothy Peters, and John A. Schaefer.

cc: State Attorney

Judge Walker

Jesse Toca



STATE OF FLORIDA - PINELLAS COUNTY

I hereby certify that the foregoing is
a true copy as the same appears among
the files and records of this court.

This 12 day of September, 2006
KEN BURKE
Clerk of Circuit Court
By: [Signature]
Deputy Clerk