

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RONALD DAVIS SMALL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D06-2780

Opinion filed November 15, 2006.

An appeal from the Circuit Court for Duval County.
Michael R. Weatherby, Judge.

Ronald Davis Small, pro se, Appellant.

Charlie Crist, Attorney General, and Carolyn J. Mosley, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

Appellant challenges the trial court's summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the trial court improperly denied appellant's motion as untimely, we reverse.

In 1976, appellant was sentenced to life in prison. He was later released on parole. In 2003, pursuant to a guilty plea, appellant was sentenced to 12 months in

prison for grand theft. Appellant was later permitted to file a belated direct appeal of his 2003 conviction, which was voluntarily dismissed on March 16, 2006. On March 28, 2006, appellant filed a motion for postconviction relief in the 2003 case, and on April 27, 2006, the trial court denied appellant's motion as untimely.

The trial court's denial of appellant's motion was improper. The two-year time limitation for filing motions for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 does not begin to run until an appellate court grants a petitioner's request for voluntary dismissal of a direct appeal. See Cabrera v. State, 721 So. 2d 1190 (Fla. 2d DCA 1998). Accordingly, here the time limitation did not begin to run until appellant's belated direct appeal was voluntarily dismissed on March 16, 2006, and appellant's motion filed on March 28, 2006, was timely.

We reverse the trial court's summary denial of appellant's motion for postconviction relief, and remand with directions that the trial court consider the motion on the merits.

REVERSED and REMANDED, with directions.

WEBSTER, POLSTON, and HAWKES, JJ., CONCUR.