

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2014*

**HOWARD FITZGERALD ORR,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D13-4800

[September 24, 2014]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Stephen A. Rapp, Judge; L.T. Case No. 502009CF011153A.

Howard Fitzgerald Orr, Moore Haven, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellee.

***On Confession of Error***

PER CURIAM.

The State concedes that this matter should be remanded for the trial court to consider appellant's amended motion for postconviction relief which included the oath the court found lacking in the original motion. *See Spera v. State*, 971 So. 2d 754 (Fla. 2007).

The trial court in its order found that, even if properly sworn, the motion would still be denied as untimely because appellant did not appeal following the judgments and sentences entered on October 14, 2010. As noted in the motion, and reflected in this Court's records, appellant did in fact appeal his convictions and sentences in circuit court case number 2009CF011153AXX. *Orr v. State*, 83 So. 3d 738 (Fla. 4th DCA 2012) (4D10-1575) (table). Our mandate affirming these convictions and sentences issued on May 30, 2012. Thus, the postconviction motion filed December 5, 2012 was timely as to this case number.

We therefore reverse and remand for further proceedings.

*Reversed and Remanded.*

DAMOORGIAN, C.J., WARNER and TAYLOR, JJ., concur.

\* \* \*

***Not final until disposition of timely filed motion for rehearing.***