

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

SANTIAGO MENDOZA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-2085

[February 21, 2007]

PER CURIAM.

This appeal is from an order denying a motion filed under Rule 3.850, Florida Rules of Criminal Procedure. However, as discussed below, the order was not final. Therefore, we dismiss without prejudice for lack of jurisdiction.

In an October 7, 2003 order, the trial court granted Santiago Mendoza an evidentiary hearing on claim six (counsel's failure to challenge identification) and claim seven (counsel's failure to call witnesses) of his initial motion. The record shows that claim seven was subsequently waived by appellant. On June 14, 2005, appellant filed an amended motion claiming newly discovered evidence. An evidentiary hearing was granted on the newly discovered evidence claim, and the claim was subsequently denied after a hearing. However, a hearing concerning the remaining claim of appellant's initial motion has not occurred. Defendant continues to await an evidentiary hearing concerning claim six of his initial motion. Because the order on the initial motion is not yet final, this appeal is premature.

Based on the current status of the case in the court below, all judicial labor of the trial court has yet to be performed because the evidentiary hearing has not been held. As such, this case is not clothed with the finality required to invoke this court's appellate jurisdiction. *See Smith v. State*, 670 So. 2d 1181 (Fla. 4th DCA 1996); *White v. State*, 450 So. 2d 556 (Fla. 2d DCA 1984).

We dismiss this appeal, without prejudice, for a lack of jurisdiction. Appellant may re-file once the case has reached finality in the court below.

GUNTHER, FARMER, and SHAHOOD, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Larry Schack, Judge; L.T. Case No. 97-960 CFA.

Carey Haughwout, Public Defender, and Jeffrey L. Anderson, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Melynda Melear, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing