

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

MICHAEL HARDY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-568

[June 20, 2007]

PER CURIAM.

The appellant, Michael Hardy, appeals the summary denial of his motion for postconviction relief. On appeal, Hardy claims the lower court erred by failing to rule on his “Motion to Dismiss or Withdraw 3.850” prior to ruling on the merits of the motion for postconviction relief. We agree, and the State has properly conceded error. Pursuant to *Washington v. State*, 937 So.2d 271 (Fla. 4th DCA 2006), and *Hampton v. State*, 949 So.2d 1197 (Fla. 4th DCA 2007), the lower court should have allowed Hardy to withdraw his rule 3.850 motion prior to a ruling on the merits, thus preserving his right to re-file the motion at a later date within the two-year period of limitations. Fla. R. Crim. P. 3.850(b). Therefore, we reverse and remand so that the lower court can grant the motion to dismiss, without prejudice, thus allowing Hardy to re-file a rule 3.850 motion within the time remaining under rule 3.850(b).

Reversed and Remanded.

STEVENSON, C.J., WARNER and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John J. Murphy, III, Judge; L.T. Case No. 04-9136 CF10A.

Michael Hardy, Jasper, pro se.

Bill McCollum, Attorney General, Tallahassee, and Laura Fisher Zibura, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing