

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

HERBERT HATHCOCK,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1877

[October 29, 2008]

PER CURIAM.

Herbert Hathcock appeals an order denying his motion to recuse and the order summarily denying his motion for post-conviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. As in *Brown v. State*, 980 So. 2d 1249 (Fla. 4th DCA 2008), we quash the order denying his motion to recuse, vacate the order denying the rule 3.850 motion, and remand with instructions that the case be reassigned to a different judge. See *Fla. R. Jud. Admin.* 2.330(j); *Berube v. State*, 978 So.2d 893 (Fla. 2d DCA 2008), *Johnson v. State*, 968 So.2d 61 (Fla. 4th DCA 2007); *Schisler v. State*, 958 So.2d 503 (Fla. 3d DCA 2007).

SHAHOOD, C.J., STEVENSON and GROSS, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Peter M. Weinstein, Judge; L.T. Case No. 02-21624 CF10A.

Herbert Hathcock, Monticello, pro se.

Bill McCollum, Attorney General, and Melanie Dale Surber, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.