

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

MARVIN BROWN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-537

[May 7, 2008]

PER CURIAM.

Marvin Brown appeals two orders entered November 19, 2007, one denying his motion to recuse and the other summarily denying his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. The state agrees that Brown's "motion to recuse/motion for postconviction relief" was served on the circuit court judge whom Brown sought to recuse not later than February 2007. After the expiration of thirty days without a ruling on that motion, Brown became entitled to an order directing the clerk of the court to reassign his case to a different judge. Fla. R. Jud. Admin. 2.330(j). Accordingly, 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.

We express no opinion on the merits of the rule 3.850 motion, which should be considered first by the successor trial court judge.

Reversed and remanded.

WARNER, POLEN and GROSS, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael L. Gates, Judge; L.T. Case No. 04-1128 CF10A.

Marvin Brown, Okeechobee, pro se.

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

Not final until disposition of timely filed motion for rehearing