

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

ELBERT D. HANEY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-797

[July 30, 2008]

PER CURIAM.

Elbert D. Haney seeks review of an order denying his rule 3.850 motion for postconviction relief as successive. That determination was made based on this court's affirmance of Haney's previous motion to withdraw plea. In reviewing that case we note that any reference by this court to treatment of that appeal as involving a rule 3.850 motion was inadvertent.

Haney had filed a motion to withdraw pursuant to Florida Rule of Criminal Procedure 3.170(l). The trial court denied the motion without reference to rule 3.850.

As a result, the rule 3.850 motion dated October 2005 is not a successive postconviction relief motion. Consequently, the case is remanded for further review of that motion.

WARNER, POLEN and STEVENSON, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case Nos. 03-6560 CF10A, 03-7203 CF10A, 03-8440 CF10A, 03-8442 CF10A, 03-9706 CF10A, 03-13110 CF10A & 03-17408 CF10A.

Elbert D. Haney, Florida City, pro se.

Bill McCollum, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.