NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

EARL CLYDE JACKSON,

Appellant,

٧.

STATE OF FLORIDA,

Appellee.

Case No. 2D12-693

Opinion filed October 17, 2012.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Pinellas County; Richard A. Luce, Judge.

Earl Clyde Jackson, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Sara Macks, Assistant Attorney General, Tampa, for Appellee.

CASANUEVA, Judge.

We reverse the summary denial of Earl Clyde Jackson's motion for

postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850 and

remand with directions to grant his motion for voluntary dismissal without prejudice.

See Hutchinson v. State, 921 So. 2d 780, 781 (Fla. 1st DCA 2006). Because the time

for filing a timely postconviction motion expired while this appeal was pending, the postconviction court shall allow Mr. Jackson thirty days after the issuance of the mandate in this case to refile his postconviction motion. <u>See Hampton v. State</u>, 949 So. 2d 1197, 1199 (Fla. 4th DCA 2007). If a motion has already been refiled, the court shall consider and rule on that motion.

Reversed and remanded with directions.

ALTENBERND and BLACK, JJ., Concur.