

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2003

LAWRENCE HOLLEY,

Appellant,

v.

CASE NO.: 5D03-1837

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 26, 2003

3.850 Appeal from the Circuit Court
for Orange County,
Stan Strickland, Judge.

Lawrence Holley, Bristol, pro se.

No Appearance for Appellee.

PER CURIAM.

Lawrence Holley appeals the summary denial of his Rule 3.850 motion pursuant to the Florida Rules of Criminal Procedure. The trial court denied the motion as untimely.

Holley was sentenced on September 27, 1999. He appealed, but his appeal was dismissed on procedural grounds. Later, Holley was able to obtain a belated appeal and have his original appeal, Case No. 5D99-3303, reinstated. This court affirmed per curiam and the mandate issued on October 1, 2001. The two-year limit for filing a Rule 3.850 motion does not begin to run until a district court mandate is issued when an appeal is taken and a per curiam affirmance is entered. *See, e.g., Beaty v. State*, 701 So. 2d 856 (Fla. 1997). Therefore, the trial court was mistaken when it calculated the two

year period as ending on October 27, 2001, two-years and 30 days after Holley's final judgment was entered.

We vacate the denial and remand for reconsideration on the merits of Holley's motion.

Order VACATED; REMANDED.

PETERSON, GRIFFIN and PLEUS, JJ., concur.