

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

JULY TERM 2008

TRAVIS D. SMITH,

Appellant,

v.

Case No. 5D08-2851

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 24, 2008.

3.850 Appeal from the Circuit
Court for Marion County,
David B. Eddy, Judge.

Travis D. Smith, Sr., Blountstown,
pro se.

Bill McCollum, Attorney General,
Tallahassee, and Allison Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Travis Smith appeals the trial court's order denying a motion for leave to amend his rule 3.850 motion. Because the trial court entered the subject order while a motion for rehearing was pending and before mandate issued in Smith v. State, 987 So. 2d 724 (Fla. 5th DCA 2008), it lacked jurisdiction, and its order is a nullity. See Carter v. State,

929 So. 2d 1161, 1162 (Fla. 5th DCA 2006); Hankerson v. State, 879 So. 2d 71, 72 (Fla. 5th DCA 2004).

Accordingly, we vacate the trial court's order and dismiss the appeal. We remind the court that it is still under a mandate to rule on appellant's motion.

ORDER VACATED and APPEAL DISMISSED.

PLEUS, EVANDER and COHEN, JJ., concur.