

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

GREGORY ARNETT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D12-4293

Opinion filed December 10, 2012.

An appeal from the Circuit Court for Gadsden County.  
Jonathan E. Sjostrom, Judge.

Gregory Arnett, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Charles R. McCoy, Senior Assistant  
Attorney General, Tallahassee, for Appellee.

PER CURIAM

Gregory Arnett appeals the summary denial of his motion seeking postconviction relief brought pursuant to Florida Rule of Criminal Procedure 3.850. We conclude that the trial court lacked jurisdiction to enter the appealed order and that it must be vacated.

At the time when the appellant's postconviction motion was filed, the direct appeal of the revocation of his community control was pending in case 1D12-2702. The trial court summarily denied the motion on the merits. As the state concedes, the trial court lacked the jurisdiction to deny the motion during the pendency of the direct appeal. See Daniels v. State, 712 So. 2d 765 (Fla. 1998).

Accordingly, we vacate the trial court's order denying the appellant's rule 3.850 motion with instructions to the trial court to permit the appellant to refile the motion without prejudice.

VACATED AND REMANDED WITH DIRECTIONS.

PADOVANO, ROWE, and RAY, JJ., CONCUR.