

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

JOHN COATES,

Appellant,

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

v.

CASE NO. 1D12-5398

STATE OF FLORIDA,

Appellee.

Opinion filed April 16, 2013.

An appeal from the Circuit Court for Leon County.
James C. Hankinson, Judge.

John Coates, pro se, Appellant.

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

PER CURIAM.

The appellant appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. At the time the trial court issued its order denying the motion, the appellant's direct appeal was pending in this court. As the state concedes, the trial court lacked jurisdiction to deny the motion during the pendency of the direct appeal. See Daniels v. State,

712 So. 2d 765 (Fla. 1998); Arnett v. State, 2012 WL 6098015 (Fla. 1st DCA Dec. 10, 2012).

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

VACATED and REMANDED with directions.

CLARK, MARSTILLER, and SWANSON, JJ., CONCUR.