

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2005*

**EDDIE TERMAINE NEAL,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D05-2342

[ November 30, 2005 ]

PER CURIAM.

Eddie Termaine Neal (Defendant) appeals from an order striking, for lack of jurisdiction, his motion for DNA evidence examination, filed pursuant to rule 3.853, Florida Rules of Criminal Procedure. We reverse and remand for the trial court to consider the merits of the motion.

In striking Defendant's rule 3.853 motion, the trial court explained that it lacked jurisdiction to consider the matter due to the pending appeal of the denial of Defendant's motion for postconviction relief, filed pursuant to rule 3.850. Before Defendant filed his motion, this court had affirmed the appeal, and by the time the trial court issued the challenged order, this court's mandate had already issued. Moreover, even if the postconviction appeal had still been pending, that should not have deprived the trial court of jurisdiction to consider Defendant's rule 3.853 motion, which raised wholly unrelated matters. *Newberry v. State*, 827 So.2d 387 (Fla. 4th DCA 2002).

Accordingly, the order on appeal is reversed and the matter is remanded for the trial court to consider the merits of the rule 3.853 motion.

*Reversed and Remanded* for further proceedings.

GUNTHER, KLEIN and TAYLOR, JJ., concur.

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Appeal of order denying rule 3.853 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Richard I. Wennet, Judge; L.T. Case No. 98-4715 CFA02.

Eddie Termaine Neal, Indiantown, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Daniel P. Hyndman, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***