

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

THOMAS SHANE HERNDON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-2307

[October 4, 2006]

PER CURIAM.

We affirm without prejudice to appellant raising issue III in a timely rule 3.850 motion. *See Patterson v. State*, 904 So. 2d 593 (Fla. 4th DCA 2005); *Keifner v. State*, 896 So. 2d 955 (Fla. 4th DCA 2005); *Zuluaga v. State*, 793 So. 2d 60 (Fla. 4th DCA 2001). As in *Patterson*, “[w]e do not have a sufficient record to determine whether, if appellant does file a rule 3.850 motion, it would be successive under rule 3.850(f), and this opinion should not be construed as deciding that issue.” *Id.* at 593; *Keifner*, 896 So. 2d at 956.

STEVENSON, C.J., FARMER and GROSS, JJ., concur.

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Appeal of order denying rule 3.800(a) motion from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Dan L. Vaughn, Judge; L.T. Case No. 312004CF001439A.

Thomas Shane Herndon, Sneads, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.