

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2008*

**EDWIN E. BOYD, SR.,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-1056

[October 30, 2008]

PER CURIAM.

Appellant, Edwin Boyd, challenges the summary denial of his motion for voluntary dismissal without prejudice of his rule 3.850 motion and denial on the merits of his rule 3.850 motion. Because Appellant's motion to dismiss was filed pursuant to the mailbox rule on June 26, 2007, prior to the trial court's ruling on the underlying rule 3.850 motion on June 29, 2007, Appellant's motion to dismiss was timely. Although the state filed its response and the trial court ruled on the postconviction motion before becoming aware that a motion to dismiss was pending, the trial court erred in denying a timely motion to dismiss. *See Hansen v. State*, 816 So. 2d 808, 809 (Fla. 1st DCA 2002). Accordingly, we reverse the trial court's order denying Appellant's motion for postconviction relief and remand with directions to grant Appellant's motion for voluntary dismissal without prejudice.

*Reversed and remanded.*

STONE, TAYLOR and DAMOORGIAN, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Sherwood Bauer, Jr., and Robert E. Belanger, Judges; L.T. Case No. 432002CF001520B.

Edwin E. Boyd, Sr., Malone, pro se.

Bill McCollum, Attorney General, Tallahassee, and August A. Bonavita, Assistant Attorney General, West Palm Beach, for appellee.

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