

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2009*

**SEAN S. PIGGOTT,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-4826

[August 12, 2009]

FARMER, J.

Defendant's Florida conviction became final in December 2002. He had been sentenced thereunder to two life terms consecutive to a conviction in Massachusetts he was already serving. He completed his Massachusetts sentence in August 2006 and was delivered to authorities a few days later to begin serving his Florida sentence. Two years later, under rule 3.850 he filed a motion for relief from the conviction asserting several grounds. The trial judge summarily dismissed the motion on the basis that it was temporally barred, having been filed more than two years after his Florida conviction became final in 2002.<sup>1</sup>

On appeal from that summary dismissal, he argues that he was entitled to a hearing to show that, owing to the lack of access to Florida legal materials, the time limit for rule 3.850 relief was tolled while he was incarcerated out of state. He relies on *Demps v. State*, 696 So.2d 1296 (Fla. 3d DCA 1997) (prisoner held in out-of-state facility without either legal reference materials of Florida or reasonable alternatives is deprived of access to Florida courts in violation of his constitutional rights). Although not cited by defendant, we also take notice of *Ramsey v. State*, 965 So.2d 854 (Fla. 2d DCA 2007), holding that the trial court should afford defendant the opportunity to show that the limitations period is deemed tolled while he was held out-of-state without access to Florida legal materials. See also *Ruiz v. State*, 3 So.3d 385 (Fla. 2d DCA 2009) (same).

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<sup>1</sup> Fla. R. Crim. P. 3.850(b) (in a noncapital case motion must be filed within 2 years after judgment and sentence become final).

This district has not adopted *Demps*. The advance of technology, with its increased access to many kinds of materials and information, raises questions about its continuing validity.<sup>2</sup> Still, the trial judge was bound to follow *Demps* even though this court had not expressed itself on the issue. See *Pardo v. State*, 596 So.2d 665, 666 (Fla. 1992) (in absence of conflict, decisions of Florida District Courts of Appeal represent law of Florida unless overruled by Florida Supreme Court; where only appellate case on point is from outside district in which trial court is located, trial court is bound to follow that decision). At this point, without adopting *Demps* as still reliable for this district, we reverse and remand for the trial court to allow defendant to establish predicate facts for his alleged avoidance of the limitations bar as in *Demps*.

*Reversed.*

POLEN and DAMOORGIAN, JJ., concur.

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Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Richard I. Wennet, Judge; L.T. Case No. 501999CF001402AXX.

Sean Piggott, Florida City, pro se.

Bill McCollum, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

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

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<sup>2</sup> *Demps* was decided 12 years ago. Access to legal materials today does not always require actual physical receipt of paper documents. Under current internet technology legal materials may be available from remote locations, even in some prisons.