

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

FELIX MARTINEZ RICO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-2952

[October 12, 2011]

PER CURIAM.

Felix Rico appeals an order denying as untimely his refiled rule 3.850 motion. Rico was not given a specific time to refile his motion with a proper oath either by this court following an appeal from the original denial or by the trial court. Rico refiled his motion with a proper oath on October 8, 2007, less than two weeks after this court dismissed his appeal. The October 8, 2007 motion relates back to the previous motion that was timely filed within the two-year time limit in rule 3.850(b). The trial court's order is reversed and this case remanded for the court to consider the October 8, 2007 motion on the merits. *See Armstrong v. State*, 989 So. 2d 1291 (Fla. 4th DCA 2008); *Woods v. State*, 963 So. 2d 348, 349 (Fla. 4th DCA 2007); *Jumper v. State*, 903 So. 2d 264 (Fla. 2d DCA 2005); *Mendes v. State*, 770 So. 2d 202 (Fla. 4th DCA 2000).

MAY, C.J., POLEN and LEVINE, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Stanton S. Kaplan and Carlos A. Rodriguez, Judges; L.T. Case No. 02-5118 CF10A.

Felix Martinez Rico, Okeechobee, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.