

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

FRANKLIN MONFISTON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-5232

[February 23, 2011]

PER CURIAM.

Appellant Franklin Monfiston challenges the circuit court's order denying his motion for postconviction relief as untimely filed pursuant to Florida Rule of Criminal Procedure 3.850. Appellant's motion was filed within two years of the date that the Supreme Court of Florida disposed of his petition for review of this court's decision on direct appeal. As such, his motion was timely filed. *See Ortiz v. State*, 4 So. 3d 794 (Fla. 4th DCA 2009); *Witt v. State*, 861 So. 2d 1292 (Fla. 5th DCA 2004); *Perkins v. State*, 845 So. 2d 273 (Fla. 2d DCA 2003); *Cargle v. State*, 800 So. 2d 698 (Fla. 1st DCA 2001).

Accordingly, we reverse and remand for the circuit court to entertain appellant's motion for postconviction relief.

Reversed and Remanded.

STEVENSON, MAY and DAMOORGIAN, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin J. Bidwill, Judge; L.T. Case No. 02-10982 CF10B.

Franklin Monfiston, Live Oak, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Melanie Dale

Surber, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.