

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

MICHAEL A. WILSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-3786

[April 13, 2011]

PER CURIAM.

We reverse the trial court's order striking the appellant's first postconviction relief motion, filed pursuant to Florida Rule of Criminal Procedure 3.850. The trial court struck the motion for postconviction relief based upon the court's prior orders prohibiting the appellant from filing future pro se pleadings. The order was entered pursuant to *State v. Spencer*, 751 So. 2d 47 (Fla. 1999). *Spencer* permits a court to prohibit a litigant who has filed repetitious and frivolous pleadings and papers from filing further attacks on his or her conviction and sentence, after notice and opportunity to be heard. In this case, the appellant had filed repetitious pleadings and papers while his case was on direct appeal from his conviction and sentence. He has not had the opportunity to file any motion for postconviction relief.

While we can sympathize with the frustration of the circuit court, we do not believe that *Spencer* was ever intended to be used to prohibit a prisoner from filing at least a first motion for postconviction relief. See *Bivins v. State*, 35 So. 3d 67 (Fla. 1st DCA 2010). *Spencer* and its progeny seek to prevent a prisoner from flooding the courts with repetitious, successive, and frivolous pleadings. Here, appellant is being prohibited from filing his first, non-successive motion for postconviction relief. We conclude that he is entitled to file that motion.

Although we permit the filing of this first postconviction motion, we caution the appellant that, should he abuse the process by continually filing additional pleadings, he may face the same prohibition again.

GROSS, C.J., WARNER and HAZOURI, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Robert A. Hawley, Judge; L.T. Case No. 312007CF001806B.

Michael A. Wilson, Sneads, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Diane F. Medley, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.