

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

STATE OF FLORIDA,
Appellant,

v.

LUIS HUBY,
Appellee.

No. 4D10-3817

[March 30, 2011]

PER CURIAM.

The state appeals an order granting appellee Luis Huby's amended motion for post-conviction relief filed under Florida Rule of Criminal Procedure 3.850. Without holding an evidentiary hearing on the amended motion, or giving notice and an opportunity to the State to respond to it, the trial court granted the motion, vacating Huby's open pleas and sentences for violation of probation. As we said in *State v. Schiano*, 696 So. 2d 531 (Fla. 4th DCA 1997), rule 3.850(d) does not authorize the trial court to summarily grant a motion for post conviction relief. We reverse and remand for further proceedings on this amended motion, to which the State should be permitted to respond, and for the trial court to allow an evidentiary hearing on the claims raised by appellee.

Reversed and Remanded.

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

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Geoffrey D. Cohen, Judge; L.T. Case No. 04-7148 CF10A.

Pamela Jo Bondi, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellant.

Jonathan S. Friedman of Jonathan S. Friedman, P.A., Fort
Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.