

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

LARRY MARSHALL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D11-2669

[July 11, 2012]

PER CURIAM.

Larry Marshall seeks review of an order that dismissed his rule 3.850 motion for postconviction relief. The judge concluded that he lacked jurisdiction to entertain the postconviction motion, in light of Marshall's pending appeal of a prior rule 3.850 motion. We reverse and remand in light of our recent decisions in *Lubin v. State*, 37 Fla. L. Weekly D1219 (Fla. 4th DCA May 23, 2012), and *Jackman v. State*, 37 Fla. L. Weekly D1076 (Fla. 4th DCA May 2, 2012). As outlined in *Lubin*, through *Jackman* we adopted the rationale of *Bryant v. State*, 37 Fla. L. Weekly D102 (Fla. 2d DCA Jan. 6, 2012), and held that a trial court has authority to consider or to defer ruling and stay a subsequently filed postconviction motion that raises unrelated issues, notwithstanding the pendency of an appeal of an order on a previously filed postconviction motion. As in *Jackman*, we express no opinion on the merits of Marshall's motion.

Reversed and remanded.

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

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jeffrey Colbath, Judge; L.T. Case No. 2004CF003686AXX.

Antony P. Ryan, Regional Counsel, Jennifer Workman Jesness,

Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel, West Palm Beach, for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.