

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

May 5, 2006.

|                   |   |                    |
|-------------------|---|--------------------|
| DREW C. HARTLEY,  | ) |                    |
|                   | ) |                    |
| Appellant,        | ) |                    |
|                   | ) |                    |
| v.                | ) | Case No: 2D05-2137 |
|                   | ) |                    |
| STATE OF FLORIDA, | ) |                    |
|                   | ) |                    |
| Appellee.         | ) |                    |
| _____             | ) |                    |

BY ORDER OF THE COURT:

Appellant's motion for clarification is granted. The opinion dated March 10, 2006, is withdrawn, and the attached opinion is substituted therefor.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

cc: Drew C. Hartley  
Attorney General

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

DREW C. HARTLEY, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D05-2137

Opinion filed May 5, 2006.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Pinellas County; J. Thomas McGrady,  
Judge.

KELLY, Judge.

Drew C. Hartley challenges the dismissal of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The postconviction court dismissed Hartley's rule 3.850 motion because Hartley has a direct appeal pending in case number 2D03-4825. While the general rule states that a trial court lacks jurisdiction to rule on a postconviction motion when a direct appeal is pending, if the postconviction motion is unrelated to the matters raised in the direct appeal, the trial

court may resolve the postconviction motion. Robertson v. State, 862 So. 2d 102 (Fla. 2d DCA 2003).

Although Hartley has an appeal pending in case number 2D03-4825, the appeal is a direct appeal of the trial court's probation revocation order. In his postconviction motion, Hartley seeks relief from his underlying convictions. Because the two are unrelated, the postconviction court erred by dismissing Hartley's motion on the ground that it did not have jurisdiction to rule. See id. Accordingly, we reverse the order of the postconviction court and remand for consideration of Hartley's motion on the merits.

Reversed and remanded.

CASANUEVA and SALCINES, JJ., Concur.