

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

KRIS A. DENNARD,)
)
Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
Appellee.)
)
_____)

Case No. 2D05-3035

Opinion filed February 15, 2006.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Hillsborough County; Daniel Lee Perry,
Judge.

DAVIS, Judge.

Kris A. Dennard challenges the postconviction court's order dismissing his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.800(a). The postconviction court determined that it did not have jurisdiction to rule on the motion because Dennard's appeal of a prior denial of his rule 3.850 motion was pending before this court and his rule 3.800(a) motion raised the same issue as the rule 3.850 motion. We conclude the

postconviction court did have jurisdiction because the issues were not the same. See Ottesen v. State, 844 So. 2d 753 (Fla. 2d DCA 2003) (noting that if the issues raised in the postconviction motion filed with the trial court are unrelated to the issues raised by the postconviction motion on appeal, the trial court is not deprived of jurisdiction).

Reversed and remanded for consideration of the motion on its merits.

KELLY and LaROSE, JJ., Concur.