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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JAMES C. PEACOCK,)
Appellant,)
V.) Case No. 2D06-982
STATE OF FLORIDA,)
Appellee.	,
)

Opinion filed July 07, 2006.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Lee County; Thomas S. Reese, Judge.

VILLANTI, Judge.

James C. Peacock appeals the postconviction court's denial of his pro se motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The postconviction court denied the motion as successive because Peacock had previously filed a rule 3.850 motion, which it denied in part and dismissed in part on February 24, 2005, after an evidentiary hearing. Peacock's appeal of the postconviction court's February 24, 2005, order is pending in this court in case number 2D05-1984.

The postconviction court did not have jurisdiction to rule on Peacock's second rule 3.850 motion because the claims raised therein were identical to claims currently under consideration in this court. See Tellas v. State, 811 So. 2d 756 (Fla. 1st DCA 2002). Therefore, we reverse the postconviction court's order denying Peacock's rule 3.850 motion and remand for entry of an order of dismissal.

Reversed and remanded.

CASANEUVA and WALLACE, JJ., Concur.