

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SCHERRY McCLELLAND, a/k/a)
SHERRY McCLELLAND,)
)
 Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D07-1793

Opinion filed September 5, 2008.

Appeal from the Circuit Court for
Highlands County; Peter F. Estrada,
Judge.

James Marion Moorman, Public Defender,
and Steven L. Bolotin, Assistant Public
Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Timothy A. Freeland,
Assistant Attorney General, Tampa, for
Appellee.

ALTENBERND, Judge.

Scherry McClelland appeals a judgment for driving under the influence
and causing death (DUI manslaughter), driving while license suspended, and child
neglect. The judgment was entered based upon Ms. McClelland's negotiated plea of

guilty to the charges. After the judgment was entered, Ms. McClelland filed a pro se motion to withdraw plea pursuant to Florida Rule of Criminal Procedure 3.170(l). The circuit court summarily denied this motion.

We affirm the judgment and sentences but note that the circuit court should have stricken the motion to withdraw plea rather than deny the motion on the merits. See Sheppard v. State, No. 2D06-4557, 2008 WL 2744496, at *2 (Fla. 2d DCA July 16, 2008); Mourra v. State, 884 So. 2d 316, 321 (Fla. 2d DCA 2004). If Ms. McClelland is later able to assert a valid claim for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, the court's denial of the motion to withdraw plea should not be deemed to have any preclusive effect on the motion for postconviction relief.

Affirmed.

SILBERMAN and LaROSE, JJ., Concur.